

THOMAS R. BURKE (CA State Bar No. 141930)  
DAVIS WRIGHT TREMAINE LLP  
505 Montgomery Street, Suite 800  
San Francisco, CA 94111  
Telephone: (415) 276-6500  
Facsimile: (415) 276-6599  
Email: thomasburke@dwt.com

DAN LAIDMAN (CA State Bar No. 274482)  
DAVIS WRIGHT TREMAINE LLP  
865 S Figueroa Street, Suite 2400  
Los Angeles, CA 90017  
Telephone: (213) 633-6800  
Facsimile: (213) 633-6899  
Email: [danlaidman@dwt.com](mailto:danlaidman@dwt.com)

Attorneys for Non-Party Journalist  
**BRYAN CARMODY**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

IN RE SEARCH WARRANTS DIRECTED TO  
NON-PARTY JOURNALIST

Misc. Case  
Assigned to the Hon. Samuel Feng

**EX PARTE APPLICATION OF NON-PARTY JOURNALIST BRYAN CARMODY FOR ORDER QUASHING SEARCH WARRANTS AND FOR RETURN OF IMPROPERLY SEIZED NEWSGATHERING MATERIALS, OR, IN THE ALTERNATIVE, TO SHORTEN TIME; SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF BRYAN CARMODY AND THOMAS R. BURKE WITH EXHIBITS A AND B**

[Proposed Order concurrently submitted]

Date: May 21, 2019  
Time: 9:00 a.m.  
Dept.: 22

1 **APPLICATION FOR EX PARTE RELIEF**

2 Non-party journalist Bryan Carmody respectfully requests that this Court quash and revoke  
3 the search warrants that it issued on May 9, 2019 for his home at [REDACTED] No. SW43687 /  
4 on May 10, 2019 for his office at [REDACTED] No. SW43684, and order the San Francisco  
5 Police Department (“SFPD”) to return all of the seized property to him immediately, or, in the  
6 alternative, that this Court shorten time so that this request can be heard as soon as possible.

7 Mr. Carmody is a journalist engaged in gathering and disseminating news to the public,  
8 and the SFPD seized dozens of computers, phones, cameras, tablets, hard drives, and reporters  
9 notebooks which contained sensitive unpublished editorial information and which he has used and  
10 continues to use in his newsgathering. Carmody Decl. ¶¶ 1-16; Memorandum, Section II. The  
11 search and seizure of Mr. Carmody’s constitutionally protected editorial materials was improper  
12 under Article I, § 2(b) of the California Constitution and California Evidence Code § 1070 (the  
13 “Shield Law”), California Penal Code § 1524(g), the federal Privacy Protection Act (42 U.S.C.  
14 §§ 2000aa-2000aa-12), the First and Fourteenth Amendments of the United States Constitution,  
15 and the free speech and press clause of the California Constitution. *See* Memorandum, Section III.

16 Because the search warrants are invalid and the ongoing seizure of these materials violates  
17 Mr. Carmody’s constitutional rights, he requests that this Court exercise its inherent power and  
18 authority under California Penal Code §§ 1538-1540 to quash the warrants and direct the SFPD to  
19 return all of the materials immediately. *Id.*, Section III.A.

20 *Ex parte* relief is warranted because Mr. Carmody is suffering serious constitutional injury  
21 – and the public is being denied important information – with each passing day that the SFPD  
22 retains custody of his newsgathering materials. *See* Carmody Decl. ¶ 16. As the United States  
23 Supreme Court has made clear, “[t]he loss of First Amendment freedoms, even for minimal  
24 periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373  
25 (1976). Mr. Carmody seeks relief under both the Court’s inherent power and the statutory scheme  
26 embodied in “Penal Code sections 1538.5, 1539, 1540, the purpose of which is to provide one  
27 whose property is seized with a *speedy remedy* in a readily accessible court.” *People v. De Renzy*,  
28 275 Cal. App. 2d 380, 387 (1969) (quotation omitted; emphasis added). Through these provisions,

1       “California law affords a *prompt and speedy remedy*, including an adversary hearing, for the  
2       return of property improperly taken under a search warrant.” *Id.* (emphasis added).

3           The search was conducted on May 10, 2019, and Mr. Carmody’s counsel contacted the  
4       SFPD that day to attempt to resolve the matter without the need for the Court’s intervention. *See*  
5       Burke Decl. ¶ 2. Mr. Carmody’s counsel followed up with the SFPD several times over the  
6       weekend of May 11-12 and sent a formal letter on May 13, 2019, informing the Department that  
7       Mr. Carmody would move this Court for relief it did not promptly respond to his requests. *Id.* ¶¶  
8       3-4. Because the SFPD did not respond to this correspondence, Mr. Carmody’s counsel provided  
9       *ex parte* notice in email correspondence on May 14, 2019, and in follow-up emails and telephone  
10      calls on May 16, 2019, to the SFPD’s legal counsel, Alicia Cabrera and Sean Connolly, informing  
11      them of the relief sought in this Application. *See* Burke Decl. ¶ 6. Ms. Cabrera’s contact  
12      information is as follows: Office of the City Attorney, 1 Carlton B Goodlett Pl, Ste 234, San  
13      Francisco, CA 94102, Phone Number: (415) 554-4673; Fax Number: (415) 554-4699; Email:  
14      alicia.cabrera@sfgov.org. As of the finalizing of this declaration counsel have not indicated if  
15      SFPD opposes the requested relief. *See* Burke Decl. ¶ 6.

16           Pursuant to Local Rule 16.11(A), Mr. Carmody seeks the return of all of the items which  
17      were seized from him pursuant to the search warrants, which are listed in the Property Receipt  
18      Form attached to his Declaration as Exhibit B. Pursuant to Local Rule 16.11(A)(2)-(3), the legal  
19      basis and authorities upon which Mr. Carmody relies for this Motion are set forth in Section III of  
20      the attached Memorandum of Points and Authorities.

21  
22  
23  
24  
25  
26  
27  
28

1 This Motion is based on the accompanying Memorandum of Points and Authorities, the  
2 Declarations of Bryan Carmody and Thomas R. Burke with Exhibits A and B, the complete files  
3 and records in this matter, and such argument as may be presented at the hearing on this Motion.

5 DATED: May 16, 2019

DAVIS WRIGHT TREMAINE LLP  
THOMAS R. BURKE  
DAN LAIDMAN

By: Thomas R. Burke

## Attorneys for Non-Party Journalist Bryan Carmody

DAVIS WRIGHT TREMAINE LLP

## 1 TABLE OF CONTENTS

		<u>Page</u>
1	I. SUMMARY OF ARGUMENT .....	8
2	II. FACTUAL BACKGROUND .....	10
3	III. MR. CARMODY'S NEWSGATHERING MATERIALS WERE IMPROPERLY 4 SEIZED IN VIOLATION OF STATE AND FEDERAL LAW AND MUST BE 5 RETURNED.....	12
6	A. The Court Has The Authority To Quash The Improperly Obtained Search 7      Warrants And Order The Return Of The Seized Material. ....	12
8	B. The Search Warrants Are Invalid Because The Seized Material Is Protected 9      By The Shield Law And Reporter's Privilege. ....	13
10	C. The Search Warrants Also Violate Federal Law.....	19
11	D. The Search Violated Constitutional Due Process And Free Speech 12      Principles .....	21
13	IV. CONCLUSION .....	22
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 TABLE OF AUTHORITIES  
2

Page(s)

3 **Cases**

4 <i>Armstrong v. Asselin</i> , 5 734 F.3d 984 (9th Cir. 2013).....	22
6 <i>Association for Los Angeles Deputy Sheriffs v. Los Angeles Times Communications LLC</i> , 7 239 Cal. App. 4th 808 (2015).....	20
8 <i>Bartnicki v. Vopper</i> , 9 532 U.S. 514 (2001) .....	20
10 <i>Berkeley Police Ass'n v. City of Berkeley</i> , 11 76 Cal. App. 3d 931 (1977).....	20
12 <i>Citicasters v. McCaskill</i> , 13 89 F.3d 1350 (8th Cir. 1996).....	19
14 <i>Delaney v. Superior Court</i> , 15 50 Cal. 3d 785 (1990).....	16
16 <i>Fost v. Superior Court</i> , 17 80 Cal. App. 4th 724 (2000).....	17
18 <i>Miller v. Superior Court</i> , 19 21 Cal. 4th 883 (1999).....	8, 14, 17
20 <i>Mitchell v. Superior Court</i> , 21 37 Cal. 3d 268 (1984).....	17
22 <i>Morse v. Regents of the Univ. of Cal.</i> , 23 821 F. Supp. 2d 1112 (N.D. Cal. 2011) .....	8, 19
24 <i>New York Times Co. v. Superior Court</i> , 25 51 Cal. 3d 453 (1990).....	16, 17
26 <i>Nicholson v. McClatchy Newspapers</i> , 27 177 Cal. App. 3d 509 (1986).....	20
28 <i>O'Grady v. Superior Court</i> , 29 139 Cal. App. 4th 1423 (2006).....	15, 17
30 <i>People v. Superior Court</i> , 31 28 Cal. App. 3d 600 (1972).....	12
32 <i>People v. Vasco</i> , 33 131 Cal. App. 4th 137 (2005).....	17

1	<i>People v. Von Villas</i> , 10 Cal. App. 4th 201 (1992).....	14, 15
2	<i>Playboy Enters., Inc. v. Superior Court</i> , 154 Cal. App. 3d 14 (1984).....	14, 15, 16
3		
4	<i>Rouzan v. Dorta</i> , 2014 U.S. Dist. LEXIS 61012 (C.D. Cal. Mar. 12, 2014) .....	21
5		
6	<i>Shoen v. Shoen</i> , 48 F.3d 412 (9th Cir. 1995).....	18
7		
8	<i>Shoen v. Shoen</i> , 5 F.3d 1289 (9th Cir. 1993).....	18
9		
10	<i>Smith v. Fair Employment &amp; Hous. Comm'n</i> , 12 Cal. 4th 1143 (1996).....	19
11		
12	<i>Williams v. Justice Court for Oroville Judicial Dist.</i> , 230 Cal. App. 2d 87 (1964).....	12
13		
14	<i>In re Willon</i> , 47 Cal. App. 4th 1080 (1996).....	13
15		
16	<i>Zurcher v. Stanford Daily</i> , 436 U.S. 547 (1978) .....	21, 22
17		
18	<b>Statutes</b>	
19		
20	42 U.S.C.	
21	§§ 2000aa-2000aa-12 .....	9
22	§ 2000aa(a)(1) .....	19
23	§ 2000aa(a)(2) .....	19
24	§§ 2000aa(a)-(b) .....	19
25	§ 2000aa(b)(1) .....	19
26	§ 2000aa(b)(2) .....	21
27	§ 2000aa(b)(2)-(3) .....	19
28	§ 2000aa(b)(3) .....	21
29	§ 2000aa(b)(4)(A) .....	21
30	§ 2000aa(b)(4)(B) .....	21
31	§ 2000aa(c) .....	21
32		
33	<b>California Penal Code</b>	
34	§ 1524(g) .....	<i>passim</i>
35	§ 1538.5(a)(B) .....	13
36	§ 1538.5(a)(B)(iii) .....	13
37	§ 1538.5(a)(B)(iv) .....	13
38	§ 1538.5(a)(B)(v) .....	13
39	§ 1538.5(n) .....	9, 12, 13
40	§ 1540 .....	12, 13, 18

1	California Evidence Code	
2	§ 1070 .....	9, 13
2	§ 1070(a) .....	17
3	California Government Code § 6254(f) .....	20
4	<b>Other Authorities</b>	
5	28 C.F.R.	
6	§ 50.10(a)(3) .....	18
6	§ 59.1(a) .....	21
7	§ 59.1(b) .....	21
8	California Constitution	
9	article I, § 2(a) .....	17
9	article I, § 2(b) .....	<i>passim</i>
10	U.S. Constitution	
11	amendment I .....	<i>passim</i>
11	amendment IV .....	21
12	amendment XIV .....	21

## **MEMORANDUM OF POINTS AND AUTHORITIES**

## I. SUMMARY OF ARGUMENT

3 The free flow of information to the public is jeopardized when the government uses its vast  
4 coercive power to commandeer a journalist's independent newsgathering efforts to further its own  
5 investigative aims. As the California Supreme Court has recognized, the "threat to the autonomy  
6 of the press is posed as much by a criminal prosecutor as by other litigants." *Miller v. Superior*  
7 *Court*, 21 Cal. 4th 883, 898 (1999). To guard against such abuse and allow the press to carry out  
8 its "unique role in society" of keeping the public informed (*id.*), state and federal law make it  
9 virtually impossible for government officials to obtain and execute search warrants targeting  
10 journalists' newsgathering material. *See* Cal. Penal Code § 1524(g); 42 U.S.C. §§ 2000aa *et seq.*  
11 Instead, the Legislature and Congress both have adopted "subpoena-first" regimes which ensure  
12 that journalists have the opportunity to assert their rights against compelled disclosure in a noticed,  
13 contested court proceeding *before* a search takes place. *Morse v. Regents of the Univ. of Cal.*, 821  
14 F. Supp. 2d 1112, 1121 (N.D. Cal. 2011); Cal. Penal Code § 1524(g); 42 U.S.C. §§ 2000aa *et seq.*

15 Despite this unambiguous controlling law, the San Francisco Police Department dispensed  
16 with the subpoena requirement entirely in this case and executed a pair of violent and  
17 breathtakingly overbroad searches of journalist Bryan Carmody’s home and office after obtaining  
18 plainly invalid warrants. In a needless display of force, nearly a dozen armed officers used a  
19 sledgehammer to break into Mr. Carmody’s residence and then kept him handcuffed for hours as  
20 they rummaged through his personal and professional belongings and seized *68 different items*,  
21 including numerous computers, phones, cameras, tablets, hard drives, and reporters notebooks  
22 which Mr. Carmody uses for his work as a journalist. *See Carmody Decl.* ¶¶ 13-16, Ex. B.

23 Mr. Carmody’s counsel reached out to the SFPD immediately following the May 10, 2019  
24 searches to demand that these editorial materials be returned and that officials refrain from  
25 reviewing them until his legal challenges are resolved. *See* Burke Decl. ¶¶ 2-3. But the SFPD has  
26 not responded, forcing Mr. Carmody to seek relief from this Court. *Id.* ¶ 4. Because the search  
27 warrants are contrary to state and federal law, and the SFPD’s continued possession of Mr.  
28 Carmody’s sensitive newsgathering materials violates his constitutional rights, this Court should

1 exercise its inherent power and authority under the Penal Code to quash and revoke the subpoenas  
2 and order the seized materials returned immediately. *See Section III.A; Penal Code §§ 1538-40.*

3 There are multiple legal grounds for granting Mr. Carmody this relief.

4 *First*, the search warrants were issued in direct violation of California Penal Code §  
5 1524(g), which unambiguously provides that “[n]o warrant shall issue” for items covered by the  
6 California Shield Law. *See Section III.B.* The Shield Law protects against the compelled  
7 disclosure of journalists’ unpublished editorial information and resource materials. *See Cal.*  
8 *Const.*, art. I, § 2(b); *Evid. Code* § 1070. The law has been clear for decades that the Shield Law  
9 applies to freelance reporters like Mr. Carmody, and it broadly applies to any and all unpublished  
10 information obtained in the course of gathering and disseminating information to the public. *See*  
11 *Section III.B.* Mr. Carmody gathered the information at issue in his role as a journalist, and as a  
12 non-party embroiled in a criminal investigation his protection under the Shield Law is *absolute*  
13 and not subject to any balancing of countervailing interests. *Id.*

14 *Second*, Mr. Carmody’s newsgathering materials independently are protected by the  
15 reporter’s privilege arising from the First Amendment and the California Constitution’s free  
16 speech and press clause. Memorandum, Section III.B; *Cal. Penal Code* § 1538.5(n) (recognizing  
17 right of journalists to challenge searches “on the ground that the property obtained is protected by  
18 the free speech and press provisions of the United States and California Constitutions”).

19 *Third*, the search warrants are deficient for the separate and additional reason that they  
20 plainly violate the federal Privacy Protection Act (“PPA”), which bars all public officials – state  
21 and federal – from searching and seizing documentary materials from journalists except in the  
22 most extreme circumstances. *See 42 U.S.C. §§ 2000aa-2000aa-12.* None of the PPA’s limited  
23 exceptions applies here, as there was no exigency for the searches and Mr. Carmody was not, and  
24 could not be, a target of any criminal investigation himself. *See Section III.C.*

25 *Finally*, in addition to the constitutional and statutory protections which render the search  
26 warrants invalid, basic principles of due process require government officials to carry out any  
27 search and seizure of sensitive personal information – particularly from non-parties – with special  
28 care. *See Section III.D.* The SFPD disregard these requirements and carried out an egregiously

1 overbroad and intrusive search, violently breaking into Mr. Carmody's home, threatening him  
2 with drawn guns, and seizing dozens of communications devices after rummaging through his  
3 residence and home for hours while he sat in handcuffs despite posing no conceivable threat. *Id.*  
4 During the course of the search of his home, Mr. Carmody was also questioned by FBI agents who  
5 pressed to reveal his confidential source.

6 For all of the reasons set forth above, Mr. Carmody respectfully requests that the Court  
7 grant his Motion, quash and revoke the search warrants in their entirety, and order the SFPD  
8 officials with custody over the seized property to return all of it to him immediately.

## 9 **II. FACTUAL BACKGROUND**

10 Bryan Carmody is a veteran journalist with 30 years of news experience. *See* Carmody  
11 Decl. ¶¶ 2-5. He has worked full-time as a journalist since the early 1990s. *Id.* ¶ 5. As the  
12 founder and owner of North Bay News, Mr. Carmody and his associates report breaking news  
13 stories and distribute their reporting and video footage on a freelance basis to local, national, and  
14 international print, broadcast, and online media outlets. *Id.* ¶ 5. He focuses on law enforcement  
15 and public safety issues, and his work regularly appears on Bay Area television news broadcasts  
16 and print publications. *Id.* ¶¶ 5-7. Mr. Carmody has held an official press pass issued by the San  
17 Francisco Police Department for more than 16 years. *Id.* ¶ 3, Ex. A (copy of Mr. Carmody's  
18 current 2019 SFPD press pass).

19 In his capacity as a journalist, Mr. Carmody reported on the death of San Francisco Public  
20 Defender Jeff Adachi in February 2019. *Id.* ¶¶ 8-11. In the course of his reporting, Mr. Carmody  
21 passively received a copy of a police report about Mr. Adachi's death from a confidential source.  
22 *Id.* ¶ 10. Mr. Carmody did not ask the source to provide him with the document, nor did he pay  
23 the source or provide any compensation for the document. *Id.* Consistent with standard  
24 journalistic practices, Mr. Carmody agreed not to reveal the source's identity, and he has not done  
25 so. *Id.* Mr. Carmody prepared a news report about Mr. Adachi's death based on interviews that  
26 he conducted, video footage that he shot, and documentary materials including the police report,  
27 and placed it with three Bay Area television stations for broadcast to the public. *Id.* ¶ 11. Mr.  
28 Carmody exercised his editorial discretion in assembling the news package although the television

1 stations ultimately determined the final content and presentation of the reports that they aired, as is  
2 the standard practice in the news business. *Id.*

3 Any and all information and materials that Mr. Carmody received related to the death of  
4 Mr. Adachi, including the police report, were obtained in the course of his gathering, processing,  
5 and disseminating information to the public through these news reports. *Id.* ¶ 10.

6 On April 11, 2019, two San Francisco Police Department officers came to Mr. Carmody's  
7 home and asked him to identify the source who allegedly gave him the police report concerning  
8 Mr. Adachi's death. *Id.* ¶ 12. Mr. Carmody refused to provide information about his sources,  
9 prompting the officers to threaten him with a federal grand jury subpoena. *Id.* Mr. Carmody  
10 steadfastly refused to disclose source information, and the officers left. *Id.* Mr. Carmody did not  
11 have any further contacts with law enforcement for nearly a month until May 10, 2019, when San  
12 Francisco Police returned to his home to execute a search warrant. *Id.* ¶ 13. Officers used a  
13 sledgehammer to enter Mr. Carmody's home, and once inside armed officers handcuffed and  
14 detained him for several hours while nearly a dozen armed officers searched his home. *Id.*

15 While police searched Mr. Carmody's home, two individuals who identified themselves as  
16 FBI agents took him into a separate room and, with no SFPD officers present, repeatedly asked  
17 him to reveal his source. *Id.* ¶ 14. Mr. Carmody refused to do so. *Id.* During the search, officers  
18 learned of Mr. Carmody's office on Fulton Street and obtained a second search warrant; they  
19 drove Mr. Carmody to his office where they carried out a second search while Mr. Carmody  
20 remained in handcuffs. *Id.* ¶ 15. As a result of both searches, San Francisco Police confiscated 68  
21 items, including multiple laptops, computers, cellphones, tables, hard drives, thumb drives,  
22 cameras, and reporters notebooks. *Id.* ¶ 16, Ex. B. Mr. Carmody uses and has used the seized  
23 items for his work as a journalist on hundreds of news investigations over the past three decades.  
24 *Id.* The seizure of virtually all of his newsgathering materials has interfered with Mr. Carmody's  
25 ability to make a living as a full-time journalist and report on issues of significant public interest  
26 *Id.*

27 On the evening of the searches on Friday, May 10, Mr. Carmody's counsel, Thomas R.  
28 Burke, telephoned the San Francisco Police Department and conveyed his concerns about the

1 search to an officer and requested that the SFPD not review any of the seized materials. *See* Burke  
2 Decl. ¶ 2. Mr. Burke placed follow-up calls to SFPD officials later that evening and again on  
3 Saturday, May 11, and was informed that SFPD officials were aware of his concerns and would  
4 respond soon. *Id.* ¶ 3. Having received no response by Monday, May 13, 2019, Mr. Burke sent a  
5 letter to SFPD Chief William Scott<sup>1</sup> requesting that the SFPD respond promptly and advising that  
6 otherwise Mr. Carmody would seek relief from the Court. *Id.* ¶ 4. That same day, SFPD  
7 Lieutenant Pilar E. Torres sent an email to Mr. Carmody apologizing for his “inconvenience” and  
8 stating that the Department might return some items “deemed as having no evidentiary value” at  
9 an undisclosed date, but indicating that the SFPD would not return any newsgathering items that it  
10 considers “relevant to our criminal investigation.” *See* Carmody Decl. ¶ 18. The email did not  
11 address Mr. Carmody’s request that the SFPD not review his property until his legal challenge is  
12 resolved, but confirmed that officials are in fact actively reviewing his newsgathering materials.  
13 *Id.* The SFPD did not respond to Mr. Burke’s letter, and therefore counsel gave *ex parte* notice to  
14 the SFPD’s counsel on May 16, 2019. *See* Burke Decl. ¶ 6.

15 **III. MR. CARMODY’S NEWSGATHERING MATERIALS WERE IMPROPERLY**  
16 **SEIZED IN VIOLATION OF STATE AND FEDERAL LAW**  
17 **AND MUST BE RETURNED**

18 **A. The Court Has The Authority To Quash The Improperly Obtained Search**  
19 **Warrants And Order The Return Of The Seized Material.**

20 “Due process of law entitles the claimant of seized property to an early court hearing to  
21 determine whether the articles were subject to seizure.” *Williams v. Justice Court for Oroville*  
22 *Judicial Dist.*, 230 Cal. App. 2d 87, 98 (1964). “The purpose of Penal Code sections 1539 and  
23 1540 is to provide the owner of seized property with a readily accessible court to pass on  
24 lawfulness of the seizure.” *Id.* In addition to these provisions, the Penal Code specifically  
25 contemplates that a journalist can bring “a motion, otherwise permitted by law, to return [seized]  
26 property, … on the ground that the property obtained is protected by the free speech and press  
27 provisions of the United States and California Constitutions.” Cal. Penal Code § 1538.5(n).

28 <sup>1</sup> A copy of this letter was also hand-delivered to the Hon. Garrett L. Wong and the Hon. Samuel Feng.

1 Moreover, the Court independently can quash a warrant and order seized property returned “in the  
2 exercise of its inherent power to prevent the abuse of court processes.” *People v. Superior Court*,  
3 28 Cal. App. 3d 600, 608 (1972) (entertaining nonstatutory motion for return of seized property,  
4 noting that “an officer seizing and holding property under a search warrant does so on behalf of  
5 the court; possession by the officer is in contemplation of the law possession by the court”).

6 Grounds for deeming a search warrant invalid and ordering property returned include, *inter*  
7 *alia*, that the property is protected by the First Amendment and California Constitution (Cal. Penal  
8 Code § 1538.5(n)); that the search and seizure was unreasonable (*Id.* § 1538.5(a)(B)); that the  
9 warrant lacked probable cause (*Id.* § 1538.5(a)(B)(iii); § 1540); that the manner in which the  
10 warrant was executed violated constitutional standards (*Id.* § 1538.5(a)(B)(iv); or that “[t]here was  
11 any other violation of federal or state constitutional standards” (*Id.* § 1538.5(a)(B)(v)). All of  
12 these defects apply in the current case because the SFPD sought and obtained grossly overbroad  
13 search warrants and seized unpublished newsgathering materials from Mr. Carmody that are  
14 squarely protected by the California Constitution, the First Amendment, and state and federal laws  
15 expressly prohibiting the issuance of search warrants for journalists’ editorial work product.  
16 Consequently, the search warrants should be quashed and revoked entirely and the property seized  
17 from Mr. Carmody must be returned immediately. *See* Cal. Penal Code §§ 1538.5(n); 1540.

18 **B. The Search Warrants Are Invalid Because The Seized Material Is Protected  
19 By The Shield Law And Reporter’s Privilege.**

20 California Penal Code § 1524(g) unequivocally provides that “[n]o [search] warrant shall  
21 issue for any item or items described in Section 1070 of the Evidence Code.” (Emphasis added.)  
22 Evidence Code § 1070 contains California’s statutory journalist’s Shield Law, which is virtually  
23 identical to the Constitutional provision. *See* Evid. Code §§ 1070; Cal. Const., art. I, § 2(b). The  
24 Shield Law provides that a journalist “shall not be adjudged in contempt .... for refusing to  
25 disclose any unpublished information obtained or prepared in gathering, receiving or processing of  
26 information for communication to the public.” Cal. Const., art. I § 2(b); Evid. Code § 1070.

27 The purpose of the Shield Law is “to safeguard the free flow of information from the news  
28 media to the public, one of the most fundamental cornerstones assuring freedom in America.” *In*

1       *re Willon*, 47 Cal. App. 4th 1080, 1091 (1996) (quotation omitted). The California Supreme Court  
2 has recognized that the Shield Law is necessary in light of “the press’ unique role in society,”  
3 explaining that, “[a]s the institution that gathers and disseminates information, journalists often  
4 serve as the eyes and ears of the public. Because journalists not only gather a great deal of  
5 information, but publicly identify themselves as possessing it, they are especially prone to be  
6 called upon by litigants seeking to minimize the costs of obtaining needed information.” *Miller v.*  
7 *Superior Court*, 21 Cal. 4th 883, 898 (1999) (quotations omitted). Not only is this burdensome,  
8 but using the power of the state to compel journalists to become investigative arms of one side of a  
9 legal dispute undermines their editorial independence and erodes the trust of their sources, which  
10 frustrates their ability to gather information to the ultimate detriment of the public. In recognizing  
11 this dynamic, the Supreme Court specifically noted that the “threat to the autonomy of the press is  
12 posed as much by a *criminal prosecutor* as by other litigants.” *Id.* (original emphasis).

13       By elevating the Shield Law from the Evidence Code to the state constitution in 1980, the  
14 California electorate made clear that those who gather and disseminate information to the public  
15 must be given the strongest possible protection against the compelled disclosure of unpublished  
16 editorial information. As one Court of Appeal noted:

17       The elevation to constitutional status must be viewed as an intention to favor the  
18 interest of the press in confidentiality over [competing interests]. . . .

19       It has long been acknowledged that our state Constitution is the highest expression of  
20 the will of the people acting in their sovereign capacity as to matters of state law.  
When the Constitution speaks plainly on a particular matter, it must be given effect as  
the paramount law of the state.

21 *Playboy Enters., Inc. v. Superior Court*, 154 Cal. App. 3d 14, 27-28 (1984).

22       The materials that the SFPD forcibly seized from Mr. Carmody fit squarely within the  
23 scope of the Shield Law, which renders the search warrants invalid under Penal Code § 1524(g).

24       First, it has been settled law for nearly 30 years that the Shield Law applies to freelance  
25 journalists like Mr. Carmody. In *People v. Von Villas*, 10 Cal. App. 4th 201 (1992), the Shield  
26 Law defeated a subpoena seeking a freelance writer’s notes and interview tapes in connection with  
27 articles that he wrote for Hustler and Los Angeles Magazine. *Id.* at 228. The court held that the  
28 “constitutional provision plainly encompasses [his] position as a freelance writer,” and it rejected

1 an argument that the Shield Law should apply only to information that he gathered after entering  
2 into a contract to sell his article to one of the magazines. *Id.* at 231-32. The court explained that  
3 the journalist “had been a reporter or freelance writer for some 13 years prior to his involvement  
4 with the instant articles. The clear language of article I, section 2, subdivision (b) provided him  
5 with newsperson’s shield protection *both before and after* the execution of the written Hustler  
6 contract.” *Id.* at 232 (emphasis added). *See also Playboy*, 154 Cal. App. 3d at 18-19 (Shield Law  
7 barred compelled disclosure of freelance journalist’s notes and interview recordings).

8 More recently, the Sixth Appellate District broadly interpreted the Shield Law to include  
9 an online blogger who wrote about Apple products, holding that the Shield Law barred the  
10 company’s attempt to force him to reveal his sources. *See O’Grady v. Superior Court*, 139 Cal.  
11 App. 4th 1423 (2006). In resounding terms, the court rejected any attempt to limit the scope of the  
12 Shield Law based on the type of journalism involved, explaining:

13 we decline the implicit invitation to embroil ourselves in questions of what constitutes  
14 ‘legitimate journalis[m].’ The shield law is intended to protect the gathering and  
dissemination of *news*, and that is what petitioners did here.

15 We can think of no workable test or principle that would distinguish ‘legitimate’ from  
16 ‘illegitimate’ news. Any attempt by courts to draw such a distinction would imperil a  
17 fundamental purpose of the First Amendment, which is to identify the best, most  
important, and most valuable ideas not by any sociological or economic formula, rule  
18 of law, or process of government, but through the rough and tumble competition of  
the memetic marketplace.

19 *Id.* at 1457 (original emphasis).

20 It is plain from these authorities that the Shield Law protects Mr. Carmody’s editorial  
21 materials. As discussed above, he is a journalist with 30 years of experience covering breaking  
22 news and law enforcement and public safety issues for a variety of different print and broadcast  
23 news outlets. *See Section II; Carmody Decl.* ¶¶ 1-8. Mr. Carmody holds an official SFPD press  
24 pass. *Id.* ¶ 3, Ex. A. To the extent that the SFPD raided Mr. Carmody’s home seeking evidence  
25 related to the disclosure of the police report about Mr. Adachi’s death, Mr. Carmody covered this  
26 story and obtained any materials solely in his capacity as a journalist, and provided a related news  
27 package to three Bay Area television stations for broadcast to the public. *Id.* ¶¶ 8-11. He plainly  
28

1 is a journalist protected by the Shield Law. *See Von Villas*, 10 Cal. App. 4th at 232.<sup>2</sup>

2 *Second*, the Shield Law broadly applies to *any and all* unpublished editorial materials. As  
3 the Supreme Court explained in *Delaney v. Superior Court*, 50 Cal. 3d 785 (1990):

4 The language of article I, section 2(b) is clear and unambiguous . . . . The section  
5 states plainly that a newsperson shall not be adjudged in contempt for ‘refusing to  
6 disclose *any* unpublished information.’ . . . . The use of the word ‘any’ makes clear that  
7 article I, section 2(b) applies to all information, regardless of whether it was obtained  
in confidence. Words used in a constitutional provision ‘should be given the meaning  
they bear in ordinary use.’ *In the context of article I, section 2(b), the word ‘any’*  
*means without limit and no matter what kind.*

8 *Id.* at 798 (emphasis added; internal citations omitted); *accord New York Times Co. v. Superior*  
9 *Court*, 51 Cal. 3d 453, 461-62 (1990) (unpublished photographs of public event protected).

10 The Shield Law thus immunizes from compelled disclosure *any* information received, or  
11 materials generated or compiled, during the newsgathering process that have not actually been  
12 published or broadcast. *Id.* For example, in *Playboy*, the court rejected a claim that a freelancer’s  
13 unpublished notes should be produced because related information was published. 154 Cal. App.  
14 3d at 21. The court cited language in Article I, Section 2(b) which expressly defines “unpublished  
15 information” to include any information “not disseminated to the public by the person from whom  
16 disclosure is sought, *whether or not related information has been disseminated.*” *Id.* at 23-24  
17 (emphasis added).

18 All of the items seized from Mr. Carmody are within the purposefully broad scope of the  
19 Shield Law. Not only did the SFPD search for items in connection with its investigation regarding  
20 the police report about Mr. Adachi’s death, but it conducted a far broader raid, rummaging through  
21 and confiscating Mr. Carmody’s entire news operation. *See* Carmody Decl. ¶ 16. The SFPD  
22 seized dozens of computers, cell phones, tablets, cameras, hard drives, and other devices which

---

23 <sup>2</sup> Organizations such as the Society of Professional Journalists, Reporters Committee for  
24 Freedom of the Press, and many others have issued statements in the wake of the SFPD raids  
25 strongly affirming Mr. Carmody’s status as a journalist protected by the Shield Law. *See* Burke  
26 Decl. ¶ 5. Mr. Carmody’s reporting on Mr. Adachi’s death involved extensive original journalistic  
27 work including conducting interviews, reviewing various documents, shooting video footage, and  
obtaining public records. *See* Carmody Decl. ¶¶ 8-11. But the law is clear that the Shield Law  
applies even to the dissemination of a “*verbatim*” document. *O’Grady*, 139 Cal. App. 4th at 1457  
(rejecting Apple’s claim that Shield Law should not apply to blogger who posted its documents  
online, reasoning that “an absence of editorial judgment cannot be inferred merely from the fact  
that some source material is published *verbatim*” and “[t]he shield exists not only to protect editors  
but equally if not more to protect newsgatherers”).

1 Mr. Carmody uses for his newsgathering and which contain unpublished editorial information  
2 related to Mr. Carmody's journalistic projects. *Id.* The seized material falls well within the scope  
3 of the Shield Law, and therefore was subject to the restrictions of Penal Code § 1524(g).<sup>3</sup>

4 *Third*, Mr. Carmody enjoys *absolute* protection under the Shield Law. The California  
5 Supreme Court has made clear that the *only* interest to be balanced against a journalist's Shield  
6 Law rights is the right of a *criminal defendant* to a fair trial; in all other instances the Shield Law  
7 is absolute. *See Miller*, 21 Cal. 4th at 896-97 (Shield Law is absolute for a non-party reporter  
8 subpoenaed by the People in a criminal case and is not balanced against any competing interest of  
9 the prosecution); *People v. Vasco*, 131 Cal. App. 4th 137, 158 (2005) ("[t]he prosecution has no  
10 due process right to overcome a newscaster's shield law immunity and force disclosure of  
11 unpublished information, even if the undisclosed information is crucial to the prosecution's case");  
12 *New York Times*, 51 Cal. 3d at 461 (Shield Law absolute for non-party reporters in civil litigation).

13 Because the government is seeking information from Mr. Carmody to further a criminal  
14 investigation and potential prosecution, this is a context in which there is no countervailing  
15 interest capable of overcoming his rights, and the Shield Law is *absolute*. *See Miller*, 21 Cal. 4th  
16 at 896-97; *Fost v. Superior Court*, 80 Cal. App. 4th 724, 731 (2000) (Shield Law immunity "need  
17 never yield to any superior constitutional right of the People") (emphasis added).<sup>4</sup>

18 *Finally*, in addition to the absolute protection offered by the California Shield Law, Mr.  
19 Carmody also is entitled to protection under the privilege created by the First Amendment to the  
20 U.S. Constitution and Article I, Section 2(a) of the state constitution, which California courts  
21 recognize as an independent ground for rejecting compelled disclosure of unpublished editorial

---

22 <sup>3</sup> The SFPD's May 13 email to Mr. Carmody implicitly conceded that the Department  
23 conducted a grossly overbroad search and seizure of his entire newsgathering operation that went  
24 far beyond the investigation related to Mr. Adachi. *See Carmody Decl.* ¶ 18.

25 <sup>4</sup> Because only a *criminal defendant* has a countervailing interest that can be balanced  
26 against the Shield Law, Mr. Carmody's protection against compelled disclosure is absolute  
27 regardless of whether police or prosecutors are seeking the information. *See Miller*, 21 Cal. 4th at  
28 896-97. But in any event, in the City and County of San Francisco, the police, the prosecution,  
and the Board of Supervisors (which apparently called for the current investigation) are all part of  
the same governmental entity. Moreover, the Shield Law broadly applies to *any* "judicial,  
legislative, or administrative body, or any other body having the power to issue subpoenas." Cal.  
Const. Art. I § 2(b); Evid. Code § 1070(a). This applies to court proceedings and criminal  
investigations including grand jury probes. *See Miller*, 21 Cal. 4th at 899 (explaining that  
California purposefully adopted a broad state Shield Law that would apply to criminal grand jury  
proceedings in response to a contrary U.S. Supreme Court ruling under federal law).

1 information. *See Mitchell v. Superior Court*, 37 Cal. 3d 268, 277-279 (1984); *O'Grady*, 139 Cal.  
2 App. 4th at 1466-68. This protection broadly applies to all individuals who “gather, select, and  
3 prepare, for purposes of publication to a mass audience, information about current events of  
4 interest and concern to that audience.” *O'Grady*, 139 Cal. App. 4th at 1467.

5 Like the Shield Law, the reporter’s privilege protects against the compelled disclosure of  
6 both confidential and non-confidential information. *See Shoen v. Shoen*, 5 F.3d 1289, 1294 (9th  
7 Cir. 1993) (“*Shoen I*”). It recognizes that compelled production of even non-confidential  
8 information “can constitute a significant intrusion into the newsgathering and editorial processes.  
9 … [I]t may substantially undercut the public policy favoring the free flow of information that is  
10 the foundation for the privilege.” *Id.* (quotation omitted). The reporter’s privilege ensures that  
11 “compelled disclosure from a journalist must be a *last resort* after pursuit of other opportunities  
12 has failed.” 5 F.3d at 1297-98 (emphasis added).

13 To ensure that the privilege prevails “in all but the most exceptional cases,” a subpoenaing  
14 party must show that the requested material is “(1) unavailable despite exhaustion of all reasonable  
15 alternative sources; (2) noncumulative; and (3) clearly relevant to an important issue in the case.”  
16 *Shoen v. Shoen*, 48 F.3d 412, 416 (9th Cir. 1995) (“*Shoen II*”). The government has not, and  
17 could not, make such a showing in this case, in which it has engaged in a breathtakingly overbroad  
18 fishing expedition by seizing dozens of electronic devices containing massive volumes of data  
19 related to all of Mr. Carmody’s newsgathering activities, with no particularized showing of need  
20 for any particular piece of information, and no showing of exhaustion of alternative sources.<sup>5</sup>

21 For all of these reasons, Mr. Carmody’s editorial materials clearly are protected both by the

---

22  
23 <sup>5</sup> Notably, the United States Department of Justice’s Guidelines on gathering information  
24 from members of the news media includes a similar standard, explaining that the “Department  
25 views the use of certain law enforcement tools, including subpoenas [and] search warrants to seek  
26 information from, or records of, non-consenting members of the news media as *extraordinary  
27 measures, not standard investigatory practices.*” 28 C.F.R. § 50.10(a)(3) (emphasis added). The  
28 Guidelines direct officials to use such tools *only* with authorization from the highest-ranking DOJ  
officials and when the information is “essential” and “after all reasonable alternative attempts have  
been made to obtain the information from alternative sources; and after negotiations with the  
affected member of the news media have been pursued and appropriate notice to the affected  
member of the news media has been provided.” *Id.* It is noteworthy that *none* of these procedures  
were followed or safeguards applied in the current case, even though the SFPD apparently brought  
FBI agents (who are subject to the DOJ Guidelines) in to help conduct the raid and attempt to  
interrogate Mr. Carmody about his confidential source. *See* Carmody Decl. ¶ 14.

1 Shield Law and the reporter’s privilege arising from the “free speech and press provisions of the  
2 United States and California Constitutions,” and therefore the warrants were invalid and the seized  
3 property must be returned. *See* Penal Code §§ 1524(g), 1538.5(n), 1540.

4 **C. The Search Warrants Also Violate Federal Law.**

5 The seizure of Mr. Carmody’s editorial materials also violated the federal Privacy  
6 Protection Act of 1980, 42 U.S.C. §§ 2000aa *et seq.* (the “PPA”). Like California’s Penal Code §  
7 1524(g), the PPA creates a “subpoena-first rule” for government searches directed at journalists  
8 which “generally prohibits government officials from searching for and seizing documentary  
9 materials possessed by a person in connection with a purpose to disseminate information to the  
10 public.” *Morse v. Regents of the Univ. of Cal.*, 821 F. Supp. 2d 1112, 1120-21 (N.D. Cal. 2011)  
11 (quotation omitted). The statute broadly applies both to editorial “work product” and any other  
12 “documentary materials,” and it applies whenever the target of a search is “reasonably believed to  
13 have a purpose to disseminate to the public” information in a “newspaper, book, broadcast, or  
14 other similar form of public communication.” 42 U.S.C. §§ 2000aa(a)-(b).

15 The law, which applies to state and local officials, “presents a straightforward statutory  
16 scheme for protecting those engaged in information dissemination from government intrusion by  
17 prohibiting searches and seizures of documentary materials except where government officials  
18 have a reasonable belief that a statutory exception applies.” *Citicasters v. McCaskill*, 89 F.3d  
19 1350, 1355 (8th Cir. 1996) (local prosecutor could be held liable under PPA based on seizure of  
20 videotape from television station); *Morse*, 821 F. Supp. 2d at 1121 (journalist whose camera was  
21 seized could bring PPA claim against chief of UC Berkeley police department); *see also Smith v.*  
22 *Fair Employment & Hous. Comm’n*, 12 Cal. 4th 1143, 1236 n.11 (1996) (recognizing the PPA’s  
23 effect of “restricting the ability of government investigators to obtain documents from the media”).

24 The narrow exceptions to the PPA do not apply in this case. There plainly were no exigent  
25 circumstances in which immediate seizure was necessary to protect someone’s physical safety or  
26 prevent the destruction of evidence. 42 U.S.C. § 2000aa(a)(2), (b)(2)-(3). To the contrary, the  
27 SFPD first visited Mr. Carmody and tried to interrogate him *more than a month before the search*,  
28 and when he refused to disclose any source information they left and took no further action for

1 weeks. *See* Carmody Decl. ¶ 12; Section II. There is no basis to believe that anyone's safety is at  
2 risk or that evidence will be destroyed, rendering the primary exception to the PPA inapplicable.  
3 Nor is there any probable cause to believe that Mr. Carmody "has committed or is committing the  
4 criminal offense to which the materials relate." 42 U.S.C. § 2000aa(a)(1), (b)(1). The SFPD did  
5 not arrest Mr. Carmody, and at no point has any official told him that he is being investigated on  
6 suspicion of committing any crime. *See* Carmody Decl. ¶ 17.

7 Authorities are not targeting Mr. Carmody because they *cannot do so* consistent with the  
8 First Amendment and the California Constitution. It is black letter constitutional law that a  
9 reporter cannot be held liable, criminally or civilly, for receiving, possessing, or publishing  
10 truthful information on matters of public concern merely because government officials were  
11 supposed to keep the information secret. "While the government may desire to keep some  
12 proceedings confidential and may impose the duty upon participants to maintain confidentiality, it  
13 may not impose criminal or civil liability upon the press for obtaining and publishing newsworthy  
14 information through routine reporting techniques." *Nicholson v. McClatchy Newspapers*, 177 Cal.  
15 App. 3d 509, 519-520 (1986). "Such techniques, of course, include asking persons questions,  
16 *including those with confidential or restricted information.*" *Id.* at 519 (emphasis added). The  
17 court thus held that the First Amendment prevented journalists from being punished for obtaining  
18 and publishing information from a confidential report about a judicial nominee. *Id.* at 513.<sup>6</sup>

19 As the U.S. Supreme Court explained when it held that a journalist could not be held liable  
20 for receiving, possessing, and broadcasting a phone call that was illegally intercepted and recorded  
21 by a third-party and leaked to the media, "a stranger's illegal conduct does not suffice to remove  
22 the First Amendment shield from speech about a matter of public concern." *Bartnicki v. Vopper*,  
23 532 U.S. 514, 535 (2001). Applying these authorities under analogous circumstances, the Court of  
24 Appeal soundly rejected the proposition that a reporter engaged in "illegal conduct" by receiving  
25 and possessing "confidential" background investigation files about sheriff's deputies that allegedly

26 \_\_\_\_\_  
27 <sup>6</sup> Here, the report at issue is *not required to be kept confidential by law*, and the police have  
28 the discretion to release it to the public. The California Public Records Act expressly provides  
that the exemption for police investigative records is *permissive* and *not mandatory*. *See* Gov't  
Code § 6254(f); *Berkeley Police Ass'n v. City of Berkeley*, 76 Cal. App. 3d 931, 942 (1977)  
(exemption does not prevent agencies from disclosing police records).

1 had been leaked by a third-party in violation of the law. *See Association for Los Angeles Deputy*  
2 *Sheriffs v. Los Angeles Times Communications LLC*, 239 Cal. App. 4th 808, 820 (2015). The  
3 court noted the “wealth of both State and Federal case law, discussing the protection journalists  
4 and the press enjoy under the First Amendment where there have been allegations that published  
5 or disclosed content had been illegally obtained.” *Id.* at 819 (quotation omitted).

6 As these authorities make clear, Mr. Carmody’s news reporting is fully protected by the  
7 First Amendment and California Constitution, and none of the narrow exceptions to the PPA apply  
8 here.<sup>7</sup> Thus, the government’s conduct clearly violated federal law.

9 **D. The Search Violated Constitutional Due Process And Free Speech Principles**

10 Finally, the government’s search and seizure, and its refusal to immediately return the  
11 materials seized from Mr. Carmody, are unreasonable and in violation of his First and Fourteenth  
12 Amendment rights because the Fourth Amendment’s requirements were not applied with  
13 “scrupulous exactitude.” *Zurcher v. Stanford Daily*, 436 U.S. 547, 564 (1978) (where “the  
14 materials sought to be seized [from the media] may be protected by the first amendment, the  
15 requirements of the fourth amendment must be applied with ‘scrupulous exactitude’”). *See also*  
16 *Rouzan v. Dorta*, 2014 U.S. Dist. LEXIS 61012, at \*26 (C.D. Cal. Mar. 12, 2014) (“the seizure  
17 and search of Plaintiff’s cellphone are assessed under the heightened protection afforded First  
18 Amendment materials”) (citing *Zurcher*, 436 U.S. at 564).

19 Even in non-media situations, wide-ranging searches of non-parties’ homes, offices,  
20 papers, and electronic devices like the one experienced by Mr. Carmody are strongly disfavored  
21 and subject to rigorous safeguards. For example, federal regulations recognize that a “search for  
22 documentary materials necessarily involves intrusions into personal privacy,” especially when  
23 “the privacy of a person’s home or office may be breached” and “private papers” examined. 28

24 <sup>7</sup> The PPA’s other exceptions apply when materials “have not been produced in response  
25 to a court order directing compliance with a subpoena” and “all appellate remedies have been  
26 exhausted,” 42 U.S.C. §§ 2000aa(b)(2), (3), and (4)(A), and when a court has ordered the media  
27 to respond to a subpoena for the materials and “there is reason to believe that the delay in an  
investigation or trial occasioned by further proceedings relating to the subpoena would threaten  
the interests of justice.” *Id.* §§ 2000aa(b)(3) and (4)(B). Concerning this “interests of justice”  
exception, the Act provides that the media “shall be afforded adequate opportunity to submit an  
affidavit setting forth the basis for any contention that the materials sought are not subject to  
seizure.” *Id.* § 2000aa(c). These exceptions are inapplicable, as there have been no such prior  
proceedings, and Mr. Carmody was afforded none of the requisite procedural protections.

1 C.F.R. § 59.1(a). Therefore, the regulations direct public officials “to recognize the importance of  
2 these personal privacy interests, and to protect against unnecessary intrusions.” *Id.* at § 59.1(b).  
3 This means that, “[g]enerally, when documentary materials are held by a disinterested third party,  
4 *a subpoena, administrative summons, or governmental request will be an effective alternative to*  
5 *the use of a search warrant and will be considerably less intrusive.*” *Id.* (emphasis added).

6 The SFPD disregarded these safeguards and obtained two warrants which apparently were  
7 virtually boundless in scope given that investigators rummaged through Mr. Carmody’s home and  
8 office for hours and seized **68 different items** – including numerous computers, hard drives, cell  
9 phones, tablets, and reporters notebooks. *See* Carmody Decl. ¶ 16, Ex. B. Although most of the  
10 warrant materials remain sealed and inaccessible to Mr. Carmody, it is inconceivable under the  
11 circumstances that the warrant was supported with sufficient detail to achieve the “scrupulous  
12 exactitude” required to support a search that infringed so seriously upon core First Amendment  
13 rights. *See Armstrong v. Asselin*, 734 F.3d 984, 994 (9th Cir. 2013) (search warrant affidavit  
14 would be “insufficient under *Zurcher*” if it did not include enough detail for judges “to ‘focus  
15 searchingly’ on the question of whether” the seized items were constitutionally protected). This is  
16 particularly true given how the search was conducted: despite the fact that they were dealing with  
17 a journalist who posed no actual or potential safety threat, nearly a dozen armed SFPD officers  
18 handcuffed Mr. Carmody for hours and used a sledgehammer to enter his home. *Id.* ¶¶ 13-15.  
19 The needlessly violent, intrusive, and extremely overbroad search and seizure violated basic due  
20 process principles, rendering the search warrants invalid on this additional independent basis.

#### 21 IV. CONCLUSION

22 At all relevant times here Mr. Carmody acted as a journalist using “routine reporting  
23 techniques,” entitling him to the full protection of the First Amendment and state and federal laws  
24 prohibiting the search and seizure of his editorial materials. *Nicholson*, 177 Cal. App. 3d at 519.  
25 It was the SFPD that flouted the law in this case by resorting to “extraordinary measures, not  
26 standard investigatory practices,” with no justification. 28 C.F.R. § 50.10(a)(3). Mr. Carmody  
27 respectfully requests that the Court grant this Motion, quash and revoke the search warrants in  
28 their entirety, and order the SFPD to return all of the seized property to him immediately.

1 DATED: May 16, 2019

DAVIS WRIGHT TREMAINE LLP  
THOMAS R. BURKE  
DAN LAIDMAN

2 By:   
3 Thomas R. Burke

4

5 Attorneys for Non-Party Journalist  
6 BRYAN CARMODY

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 THOMAS R. BURKE (CA State Bar No. 141930)  
2 DAVIS WRIGHT TREMAINE LLP  
3 505 Montgomery Street, Suite 800  
4 San Francisco, CA 94111  
Telephone: (415) 276-6500  
Facsimile: (415) 276-6599  
Email: thomasburke@dwt.com

5 DAN LAIDMAN (CA State Bar No. 274482)  
DAVIS WRIGHT TREMAINE LLP  
6 865 S Figueroa Street, Suite 2400  
Los Angeles, CA 90017  
7 Telephone: (213) 633-6800  
Facsimile: (213) 633-6899  
8 Email: danlaidman@dwt.com

9 | Attorneys for Non-Party Journalist  
**BRYAN CARMODY**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

4 | IN RE SEARCH WARRANTS DIRECTED TO  
NON-PARTY JOURNALIST

Misc. Case  
Assigned to the Hon. Samuel Feng

**DECLARATION OF BRYAN CARMODY  
IN SUPPORT OF *EX PARTE*  
APPLICATION OF NON-PARTY  
JOURNALIST BRYAN CARMODY FOR  
ORDER QUASHING SEARCH  
WARRANTS AND FOR RETURN OF  
IMPROPERLY SEIZED  
NEWSGATHERING MATERIALS, OR,  
IN THE ALTERNATIVE, TO SHORTEN  
TIME**

Date: May 21, 2019  
Time: 9:00 a.m.  
Dept.: 22

**DECLARATION OF BRYAN CARMODY**

I, Bryan Carmody, hereby declare as follows:

1. I am a journalist who lives and works in San Francisco, California. I make this declaration based on my personal knowledge of the facts stated in this declaration and could competently testify to them if called as a witness. I provide this declaration as a summary of the facts relevant to this motion.

2. I began work as a freelance photographer for the Marin Independent Journal beginning in approximately 1989. I soon transitioned to regularly providing video news stories to local media outlets.

3. I was first issued a press pass by the San Francisco Police Department by Chief Prentice E. Sanders when he served as Chief of Police from 2002-2003. My press pass is current and re-authorized yearly by the San Francisco Police Department (“SFPD”) as recently as 2019. A true and correct copy of my SFPD press pass is attached as Exhibit A.

4. I am the owner of North Bay Television News. I formed this company in January 1992 to operate as a news service. My company shoots and investigates exclusive breaking news stories which we then sell to local, national and international print, online, and broadcast media outlets. Over the years since 1992, my company has worked with approximately 15 associates who also shoot and investigate news stories in the Bay Area. We help gather information, video and photographs for news stories that appear on radio and TV, print and online. We work with reporters and editors at news organizations to collaborate on covering breaking and investigative stories. Our footage is often exclusive and crucial to a news story as I am often the first journalist on scene because I am covering news during evening and late-night hours.

5. Since 1990, I have continuously worked full-time as a freelance journalist. In this capacity, on a daily basis, I routinely interview and speak with individuals who have information about breaking news events, obtain documents, shoot video footage of news scenes like fires, public safety emergencies and car accidents, and I monitor the activities of law enforcement, and fire calls and other emergency responses in the Bay Area. My video footage and news reporting have been crucial to documenting news events in San Francisco over the past three decades. As a

1 freelance journalist, I am typically paid for providing my reporting on a news event as a “package”  
2 that includes video and photographs that I take, witness interviews, public records and other  
3 documentary materials.

4 6. Some recent examples of my news reporting work that I broke as a journalist include:

5 -- On Feb. 22, 2019, a cliff collapsed at a public space in Fort Funston, injuring one victim  
6 and killing another. I was the first reporter at the scene and videoed footage of rescue efforts. I  
7 provided this package to six TV stations, all of which used this reporting;

8 -- On March 15, 2019, I was the first reporter at the scene of the fatal car crash that killed a  
9 14-year-old girl who was walking with her mother and dog on John Muir Drive along Lake Merced  
10 in San Francisco. I videoed footage of the aftermath of the crash, including the car of the driver  
11 involved in the crash. My package of news reporting was purchased and published by six media  
12 outlets. This story prompted “a dozen of [the victim’s] teenage soccer teammates [to make] their  
13 way to City Hall to demand safety changes to John Muir Drive.” (Source: The San Francisco  
14 Examiner, April 18, 2019); and

15 -- On April 17, 2019, I received information and photographs from a news source concerning  
16 a possibly catastrophic malfunction of brand-new Muni equipment on the brand-new trains that  
17 thousands of San Francisco residents ride every day. I provided this package to four TV stations,  
18 all of which used this reporting.

19 7. Over the course of my career as a journalist, my reporting work has appeared (in print,  
20 online or on television) in or on every publication and station in the Bay Area and many national  
21 and international news outlets. This includes, for example, 60 Minutes, ABC News, the Associated  
22 Press, the Canadian Broadcasting Corporation, Channel 9 Australia, CNN, Cross TV, Dateline,  
23 ESPN, Fox News, KABC (Los Angeles), KCBS (San Francisco), KDTV (San Jose), KFSN (San  
24 Francisco), KGO (San Francisco), KFSN (Fresno), KFTY (Santa Rosa), KNTV (San Jose), KOVR  
25 (Sacramento), KPIX (San Francisco), KRNV (Reno), KRON (San Francisco), KTLA (Los  
26 Angeles), KVBC (Las Vegas), KYW (Philadelphia), the Mercury News (San Jose), MSNBC, NBC,  
27 New York Post, Patch.com, R.T.L. Television (Germany), Real TV (Los Angeles), Telemundo  
28

1 National Network, Univision, WABC (New York), WCAU (Philadelphia), Weather Channel,  
2 WFOR (Miami), WLS (Chicago), and WUSA (Washington, D.C.).

3       8. On February 22 or 23, 2019, as I was working, I learned through news sources that San  
4 Francisco Public Defender Jeff Adachi had died. I believed that the circumstances surrounding the  
5 sudden and unexpected death of a prominent, high-ranking elected official were newsworthy and of  
6 substantial interest to the public. I followed up on this and began calling sources that I have  
7 cultivated over the years to uncover what I could learn about this developing news story. I spoke  
8 with other journalists and monitored social media as well as any news coverage about Mr. Adachi's  
9 death. Hours after Mr. Adachi's death, it was reported by another journalist that Mr. Adachi had  
10 died while traveling so I began to investigate the city in which Mr. Adachi had died and to follow-  
11 up to learn more information.

12       9. Over the next day, I located and videoed the outside of the apartment building/house at  
13 46 Telegraph Place in San Francisco. Sources told me this was the location where Mr. Adachi had  
14 been immediately before he was taken to the hospital. I obtained on and off the record interviews.  
15 I obtained relevant documents. I shot video of the documents and related photos.

16       10. At some point while I was investigating the news of Mr. Adachi's death, I was provided  
17 a copy of a 16-page report, dated February 22, 2019, concerning SFPD's investigation of Mr.  
18 Adachi's death. I did not ask the source to provide me with this document – but when it was  
19 provided to me, they insisted that I not reveal their identity. I did not pay or provide any  
20 compensation whatsoever to this source for providing this report to me – nor did I promise them  
21 that I would pay or compensate them in the future in any way. I agreed to not reveal the source's  
22 identity and I have not disclosed their name to anyone. Since I made this promise to this source, I  
23 have not revealed this source's identity to anyone. Any and all information and documentary  
24 materials that I acquired relating to Mr. Adachi's death were obtained in the course of my work as  
25 a journalist, for the purpose of gathering and disseminating news to the public.

26       11. On February 23, 2019, I provided the video footage that I had shot, information obtained  
27 through interviews, information I obtained from sources along with a copy of the police report that  
28 I had received to three television stations in the Bay Area as a package. I exercised my editorial

1 discretion in reporting the story and assembling the news package based on these various source  
2 materials. Then, as typically happens after I provide such a package, and as is standard practice in  
3 the news business, I was not involved in the final editing or decisions about what information the  
4 television stations reported about the circumstances of Mr. Adachi's death.

5 12. On April 11, 2019, at approximately 2:00 p.m., I was visited by two San Francisco  
6 Police Officers at my home at [REDACTED], in the Richmond District, in San Francisco. They  
7 identified themselves as Lt. Watts and Sgt. Obidi. I invited them into my home. They told me they  
8 would like to talk to me regarding the release of the police report. Ultimately, they asked me to  
9 reveal the name of my news source who gave me the San Francisco Police report referenced in  
10 paragraph 10 above. I told them that I would not reveal the name of this source because I had  
11 promised this source confidentiality. They asked me what I would do if I was subpoenaed by a  
12 federal grand jury. I told them that I would not reveal my source and they eventually left.

13 13. The police did not contact me again until the morning of May 10, 2019, when, after  
14 working much of the night before, I awoke to the very loud sound of banging on the front door of  
15 my house. I thought that someone was breaking into my home. I went to my door and saw that it  
16 was a man – wearing a San Francisco Police uniform – along with another man in a police  
17 uniform who was carrying a sledgehammer. I opened the door and was immediately surrounded  
18 by about a dozen San Francisco police officers. They showed me a search warrant, handcuffed me  
19 with metal handcuffs, and sat me down in the living room of my home. They initially went  
20 through my entire house at gunpoint looking for any other people. Then they proceeded to search  
21 my entire home, attic, and garage. For the next six hours, I remained in handcuffs while the  
22 officers went through everything in my home and inside my cars that were parked in my garage  
23 and on the street in front of my home.

24 14. While the San Francisco Police were searching my home, two individuals who  
25 identified themselves to me as being FBI agents took me into my home office and sat with me for  
26 approximately five minutes. They presented me with their FBI credentials. No San Francisco  
27 Police officers were present in the room with the three of us. During this time, the agents  
28 repeatedly asked me to reveal the name of my confidential source. I did not reveal the name of my

1 source. They also asked me if I paid anything to receive the police report. I told them that I had  
2 paid nothing. They told me that they were asking because this was possibly a case of “obstruction  
3 of justice.” Other than providing these limited answers, in response to their questioning, I  
4 alternated between staying quiet and repeatedly telling the agents that I wanted to speak to a  
5 lawyer. Because my hands were handcuffed and my cell phone had been taken, I could not call  
6 anyone. At one point they offered to give me my cell phone to make a call, but I declined because  
7 I didn’t want to then give them the access code to my phone. They told me they would unlock it  
8 for me.

9 15. During the search of my home, the officers apparently learned that I had an office on  
10 Fulton Street where I operate my news service. After about three hours, while still in handcuffs, I  
11 was escorted from my home, put into the front of a San Francisco Police car, and driven to my  
12 office on Fulton Street. We all waited approximately one hour for other officers to get a second  
13 search warrant. I was then shown another search warrant and was put in a chair while the officers  
14 searched my office. I was released from handcuffs and the police finally left at 1:55 p.m.

15 16. As a result of both searches, San Francisco Police confiscated reporter’s notebooks,  
16 papers and a dozen laptops, computers, computer drives, discs, and several cell phones that I use  
17 (and have used years before) for my work as a journalist on the hundreds of news stories and  
18 investigations that I have worked on as a freelance journalist. Essentially, the San Francisco  
19 Police seized my entire news operation. Attached as Exhibit B is a copy of the inventory that the  
20 San Francisco Police gave me as they left. I estimate the value of the electronics taken from my  
21 home and office to be approximately \$30,000. Since then, I have had to purchase entirely new  
22 equipment and begin to figure out how to resume my work – and living – as a freelance journalist.

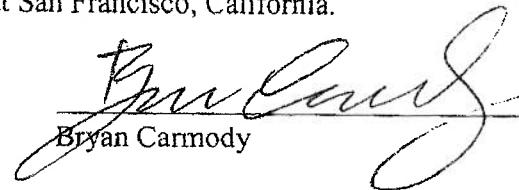
23 17. At no time have I been told by anyone in law enforcement that I am a suspect or will  
24 be charged with any crime concerning my work as a journalist, including my newsgathering  
25 activities in connection with my reporting on the death of Jeff Adachi. I was not told that I was  
26 under arrest during the searches of my home and office.

27 18. On Monday, May 13, 2019, after my legal counsel had repeatedly made demands to  
28 the SFPD to return and not review any of my protected newsgathering materials, I received an

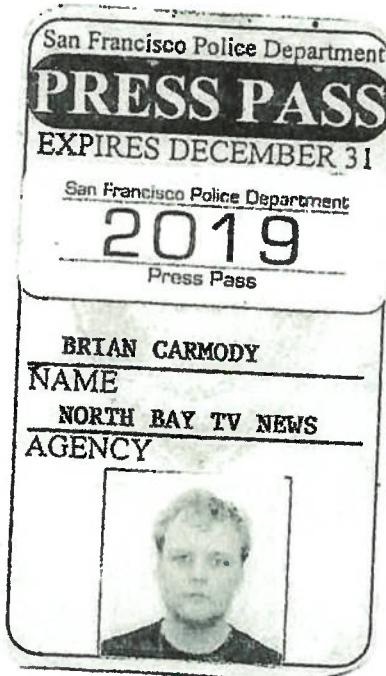
1 email from SFPD Lt. Pilar E. Torres. It read: "Mr. Carmody, Today, I was made aware of your  
2 request to have your property returned. Per our discussion on 3/10/19 [sic], we have been  
3 diligently working on identifying the items that are relevant to our criminal investigation. The  
4 property that is deemed as having no evidentiary value will be turned to you as soon as possible. I  
5 apologize for any inconvenience that this has caused you and I anticipate that we will be returning  
6 most of your property back to you within the week." In spite of my objections and of those of my  
7 legal counsel, this email unfortunately confirmed my understanding that SFPD continues to  
8 possess – and is in the process of reviewing – my protected newsgathering materials.

9 I declare under penalty of perjury that the foregoing is true and correct.

10 Executed this 16<sup>th</sup> day of May, 2019, at San Francisco, California.

11   
12 Bryan Carmody  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

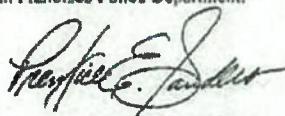
## **EXHIBIT A**



This pass shall only be used by the person to whom it has been issued, and used only while actively engaged in news-gathering activity. The pass must be worn on the outermost garment so that it is plainly visible.

This pass allows the holder to pass through police and fire lines for the purpose of news gathering, but does not allow access into a crime scene or into a restricted area if such entry interferes with the duties of emergency personnel.

The user assumes all risks when using this pass and agrees to notify the San Francisco Police Department upon change of employment. This pass is the property of the San Francisco Police Department and is subject to revocation and surrender upon demand by an officer or agent of the San Francisco Police Department.



Chief of Police

CHIEF OF POLICE

## **EXHIBIT B**

State of California- City of San Francisco  
**SEARCH WARRANT AND AFFIDAVIT  
(AFFIDAVIT)**

Sergeant Joseph Obidi #2328 swears under oath that the facts expressed by her in the attached and incorporated Statement of Probable Cause, are true and that based there on he has probable cause to believe and does believe that the person(s), property, and/or thing(s) described below is/are lawfully seizable pursuant to Penal Code Section 1524, as indicated below, and is/are now located at the locations set forth below. Wherefore, affiant requests that this Search Warrant be issued.

  
(Signature of Affiant)

NOBBS SEALING REQUESTED: YES (XX) NO ( )  
NIGHT SERVICE REQUESTED: YES ( ) NO (XX)

**(SEARCH WARRANT)**

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY SHERIFF, POLICE OFFICER OR PEACE OFFICER IN THE CITY AND COUNTY OF SAN FRANCISCO, CA: proof by affidavit having been made before me by Sergeant Joseph Obidi #2328, that there is probable cause to believe that the property, person(s), and/or things described herein may be found at the locations set forth herein and that it is lawfully seizable pursuant to Penal Code Section 1524 as indicated below by "X" (s) in that it:

XXX tends to show the property was stolen or embezzled.  
XXX tends to show that a felony has been committed or that a particular person committed a felony

**YOU ARE THEREFORE COMMANDED TO SEARCH:**

**Person(s):**

- The person of Bryan Carl Carmody, DOB 09-25-1970, California [REDACTED]  
-further described as a white male, Height: 6'-01", Weight: 240lbs, Hair: Blond, Eyes: Blue

**Place(s):**

- [REDACTED] San Francisco CA, further described as a two story single family home that is brown in color. The house is located on the [REDACTED]. The roof is brown in color. The numbers [REDACTED] are affixed on the front of the house next to the garage. The garage door is brown in color. There are stairs leading to the front door. The front door is brown in color and is located behind a black gate. See attached photo.
- Any safes, outhouses, storage sheds, containers, storage compartments that are capable of storing the item(s) to be sought, located on the grounds of [REDACTED] San Francisco CA.
- Bryan Carmody's personal cellphone (handset) using [REDACTED] From February 22<sup>nd</sup> 2019 to May 1<sup>st</sup> 2019.

**Vehicles:**

- 1- CA- 6UWY583 (2002 BMW SUV)
- 2- CA- 2PSU261 (1998 FORD SEDAN)
- 3- CA- 6FAP022 (2001 BMW SEDAN)
- 4- CA- 6PBA851 (2004 BMW SEDAN)
- 5- CA- 8Y7666 (1983 BMW)
- 6- CA- 22A0354 (1985 HONDA)
- 7- CA- 12X3248 (1991 HONDA)
- 8- CA- 21K5609 (2009 YAMAHA)

FOR THE FOLLOWING PROPERTY; PERSON AND THING(S):

See Exhibit A

All information obtained through the execution of the warrant that is unrelated to the object of the warrant shall be sealed and not subject to further review, use, or disclosure without a court order.

AND IN THE CASE OF PROPERTY, INFORMATION, AND/OR THINGS, TO SEIZE THEM IF FOUND and bring it/them forthwith before me, or this court, at the courthouse of this court. This Search Warrant and Incorporated Statement of Probable Cause was sworn to as true and subscribed before me this 9 AM day of May, 2019 at 12:21 AM. /PM. Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.

HOBBS SEALING AUTHORIZED: YES  NO

NIGHT SERVICE AUTHORIZED: YES  NO

Honorable JUDGE GAIL DEPARTMENT  
Judge of the Superior Court # 5 City and County of San Francisco, CA.



PROPERTY RECEIPT FORM  
San Francisco Police Department

RECEIVED FROM	DATE	CASE NUMBER
	5/10/19	190334240
ITEM(S)		
1.	(1) Samsung tablet	
2.	(1) HP laptop Pavillion silver SCD9031M2Q	
3.	(1) seagate hard drive NA8T17GG	
4.	(2) WD hard drive "captured vid backup 1" and 2	
5.	(1) hard drive open without cover	
6.	(1) Samsung cell phone from hallway	
7.	(1) Canon camera S110	
8.	(1) sony cybershot camera	
9.	(1) HP laptop 00196-268-356-503	
10.	(2) thumb drives	
11.	(1) SD disk	
OFFICER ACCEPTING PROPERTY (SIGNATURE)	WITNESS (SIGNATURE)	RECEIVED FROM (SIGNATURE)
Frank J. Miller #423		L. BERNSTEIN #231

SFPD-315 (REV.06/99)

PROPERTY RECEIPT FORM  
San Francisco Police Department

RECEIVED FROM	DATE	CASE NUMBER
	5/10/19	190334240
ITEM(S)		
1.	(1) LG cell phone	
2.	(1) blue iPod	
3.	(1) Amazon Kindle, BLK w/chargers	
4.	(1) Sprint flip phone BLK	
5.	(1) Samsung Verizon flip phone	
6.	(1) Samsung ATT phone	
7.	(1) Blackberry Sprint phone	
8.	(1) motorola cell phone	
9.	(1) HTC Verizon phone	
10.	(1) Verizon LG phone	
11.	(1) Samsung tablet	
OFFICER ACCEPTING PROPERTY (SIGNATURE)	WITNESS (SIGNATURE)	RECEIVED FROM (SIGNATURE)
Frank J. Miller #423		L. BERNSTEIN #231

SFPD-315 (REV.06/99)

PROPERTY RECEIPT FORM  
San Francisco Police Department

RECEIVED FROM	DATE	CASE NUMBER
	5/10/19	190334240
ITEM(S)		
1.	(1) Samsung Galaxy S9	
2.	(1) Kyocera flip phone	
3.	(1) Pearl colored HP laptop CND 54008R6	
4.	(1) "Xfer drive 1" hard drive	
5.	(1) HP computer tower	
6.	(1) HP tower CNV 304005V	
7.	(1) "E-series" computer tower 0031649465	
8.	(3) CD's	
9.	(1) Hard drive Seagate Backup + hub NA8T5KMO	
10.	(1) Seagate 5tb 1" NASTSKER	
11.	(2) flash drives	
OFFICER ACCEPTING PROPERTY (SIGNATURE)	WITNESS (SIGNATURE)	RECEIVED FROM (SIGNATURE)
fullfull 4275	L-BERNSTEIN #23d1.	JK

SFPD-315 (REV.06/99)

PROPERTY RECEIPT FORM  
San Francisco Police Department

RECEIVED FROM	DATE	CASE NUMBER
	5/10/19	190334240
ITEM(S)		
1.	(1) thumb drive	
2.	(1) indicia	
3.	(1) white iPad in black case	
4.	(1) HP laptop black "special edition"	
5.	(1) white iPhone	
6.	(1) white iPod 30 GB	
7.	(2) reporter's notebooks	
8.	(1) CD case leather w/ 12 CD's	
9.	(1) Samsung tablet w/ case	
10.	(1) visual land tablet	
11.	(2) LG verizon cell phones	
OFFICER ACCEPTING PROPERTY (SIGNATURE)	WITNESS (SIGNATURE)	RECEIVED FROM (SIGNATURE)
fullfull 4275	L-BERNSTEIN #23d1.	JK

SFPD-315 (REV.06/99)

PROPERTY RECEIPT FORM  
San Francisco Police Department

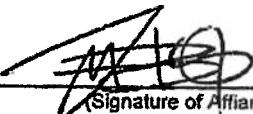
RECEIVED FROM	SF.CA	DATE	CASE NUMBER
ITEM(S)	5/10/19 190334240		
1.	(1) SD disk		
2.	(2) flash drives		
3.	(7) external hard drives		
4.	(6) flash drives		
5.	(6) SD cards		
6.	(1) Navy blue ext. hard drive		
7.	(1) "filing map" folder		
8.			
9.			
10.			
11.			
OFFICER ACCEPTING PROPERTY (SIGNATURE)	WITNESS (SIGNATURE)	RECEIVED FROM (SIGNATURE)	

*full Jn-0 #4276 L-BERENGUIN #2301*

SFPD-315 (REV.06/99)

State of California- City of San Francisco  
**SEARCH WARRANT AND AFFIDAVIT  
(AFFIDAVIT)**

Sergeant Joseph Obidi #2328 swears under oath that the facts expressed by her in the attached and incorporated Statement of Probable Cause, are true and that based there on he has probable cause to believe and does believe that the person(s), property, and/or thing(s) described below is/are lawfully seizable pursuant to Penal Code Section 1524, as indicated below, and is/are now located at the locations set forth below. Wherefore, affiant requests that this Search Warrant be issued.

  
(Signature of Affiant)

HOBBS SEALING REQUESTED: YES (XX) NO ( )

NIGHT SERVICE REQUESTED: YES ( ) NO (XX)

**(SEARCH WARRANT)**

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY SHERIFF, POLICE OFFICER OR PEACE OFFICER IN THE CITY AND COUNTY OF SAN FRANCISCO, CA: proof by affidavit having been made before me by Sergeant Joseph Obidi #2328, that there is probable cause to believe that the property, person(s), and/or things described herein may be found at the locations set forth herein and that it is lawfully seizable pursuant to Penal Code Section 1524 as indicated below by "X" (s) in that it:

XXX tends to show the property was stolen or embezzled.

XXX tends to show that a felony has been committed or that a particular person committed a felony

**YOU ARE THEREFORE COMMANDED TO SEARCH:**

**Place(s):**

- [REDACTED] San Francisco CA 94102.
- Further Described as a multilevel (4floors) apartment building with the numbers [REDACTED] affixed on the front entrance. [REDACTED] is further described to be a room with a brown door and the numbers [REDACTED] affixed to it on a black number plate.
- Any safes, storage sheds, containers, storage compartments that are capable of storing the item(s) to be sought, located on the grounds of [REDACTED] San Francisco CA.

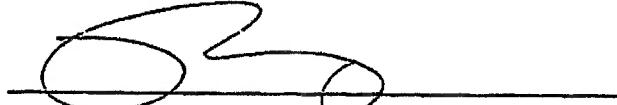
**FOR THE FOLLOWING PROPERTY; PERSON AND THING(S):**

See Exhibit A

All information obtained through the execution of the warrant that is unrelated to the object of the warrant shall be sealed and not subject to further review, use, or disclosure without a court order.

AND IN THE CASE OF PROPERTY, INFORMATION, AND/OR THINGS, TO SEIZE THEM IF FOUND and bring it/them forthwith before me, or this court, at the courthouse of this court. This Search Warrant and incorporated Statement of Probable Cause was sworn to as true and subscribed before me this 27 day of May, 2019 at 12:19 AM. 1PM Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.

HOBBS SEALING AUTHORIZED: YES  NO   
NIGHT SERVICE AUTHORIZED: YES  NO

  
Honorable Victor Hwang  
Judge of the Superior Court # 13, City and County of San Francisco, CA.

PROPERTY RECEIPT FORM  
San Francisco Police Department

RECEIVED FROM		DATE	5/10/19	CASE NUMBER	190 334 240
ITEM(S)	1. KTSF check stub # 22894 2. FOX check stub # 76110791, 76110680, 76110910, 76110587 3. Disney check stub # 2623, 2369 4. NBC stub # 392 0039 391 3614 5. CBS check stub 987483068942, 214816 6. Nexstar check stub 3211332A 7. 8. 9. 10. 11.				
OFFICER ACCEPTING PROPERTY (SIGNATURE)			WITNESS (SIGNATURE)	RECEIVED FROM (SIGNATURE)	

*full J. Fullall* *#2328* *J. Fullall*

SFPD-315 (REV.06/99)

PROPERTY RECEIPT FORM  
San Francisco Police Department

RECEIVED FROM		SF	DATE	5/10/19	CASE NUMBER	190 334 240
ITEM(S)	1. (1) Police report (SFPD) 2. (1) CD case containing 55 CD's 3. (1) thumb drive - sandisk 4. (1) Motorola tablet 5. (1) HP tower 6. (1) Dell tower 7. (1) FX computer tower 8. (1) USB drive 9. (1) ASUS tower 10. (1) lenovo idea center 11. (27) CDs in tower					
OFFICER ACCEPTING PROPERTY (SIGNATURE)			WITNESS (SIGNATURE)	RECEIVED FROM (SIGNATURE)		

*full J. Fullall* *#2328* *J. Fullall*

SFPD-315 (REV.06/99)

1 THOMAS R. BURKE (CA State Bar No. 141930)  
2 DAVIS WRIGHT TREMAINE LLP  
3 505 Montgomery Street, Suite 800  
4 San Francisco, CA 94111  
5 Telephone: (415) 276-6500  
6 Facsimile: (415) 276-6599  
7 Email: thomasburke@dwt.com

8  
9 DAN LAIDMAN (CA State Bar No. 274482)  
10 DAVIS WRIGHT TREMAINE LLP  
11 865 S Figueroa Street, Suite 2400  
12 Los Angeles, CA 90017  
13 Telephone: (213) 633-6800  
14 Facsimile: (213) 633-6899  
15 Email: danlaidman@dwt.com

16 Attorneys for Non-Party Journalist  
17 BRYAN CARMODY

18

19

20

21

22

23

24

25

26

27

28

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

IN RE SEARCH WARRANTS DIRECTED TO  
NON-PARTY JOURNALIST

Misc. Case  
Assigned to the Hon. Samuel Feng

**AMENDED DECLARATION OF  
THOMAS R. BURKE IN SUPPORT OF  
EX PARTE APPLICATION OF NON-  
PARTY JOURNALIST BRYAN  
CARMODY FOR ORDER QUASHING  
SEARCH WARRANTS AND FOR  
RETURN OF IMPROPERLY SEIZED  
NEWSGATHERING MATERIALS, OR,  
IN THE ALTERNATIVE, TO SHORTEN  
TIME**

Date: May 21, 2019  
Time: 9:00 a.m.  
Dept.: 22

**DECLARATION OF THOMAS R. BURKE**

I, Thomas R. Burke, hereby certify as follows:

1. I am an attorney admitted to practice before all the courts in the State of California and before this Court. I am a partner in the law firm of Davis Wright Tremaine LLP and am one of the attorneys representing Mr. Carmody to obtain the return of the protected newsgathering materials that were seized from his home and news service office by San Francisco Police on May 10, 2019. I make this declaration from personal knowledge, and a review of the files and records in this matter, and could competently testify if called as a witness.

9       2.     At approximately 6:17 p.m. on Friday May 10, 2019, I telephoned the San  
10 Francisco Police Department and immediately referred to SFPD Officer Joseph Tomlinson as  
11 someone in the SFPD's media relations department who had after-hours access to the Chief and  
12 others in the Department. I then telephoned Officer Tomlinson. I told him that I was an attorney  
13 and that I represented Mr. Carmody, a San Francisco journalist, whose home and office had been  
14 searched by San Francisco Police earlier that day. I told Officer Tomlinson that the execution of a  
15 search warrant on a journalist was legally improper under federal and state law and that I needed  
16 to speak with someone as soon as possible about this matter. I specifically requested that the  
17 SFPD not review any of the materials that had been seized from Mr. Carmody's home and office.  
18 Having received no response back to my call, I again telephoned Officer Tomlinson at  
19 approximately 6:43 p.m. to inquire whether he had any information. He said that he had the  
20 information that I had told him earlier and my contacts and that someone with SFPD would get  
21 back to me. I reiterated to him the urgency of the matter and my request that none of the materials  
22 taken from Mr. Carmody's home and office be reviewed.

23       3.     On Saturday morning, May 11, 2019, at approximately 11:30 a.m., I telephoned  
24 David Stevenson, SFPD's media liaison. I explained who I was and why I was calling. Mr.  
25 Stevenson immediately confirmed that he knew of my calls to Officer Tomlinson the night before.  
26 Mr. Stevenson said that he had my contact information that that someone with SFPD would get  
27 back to me. Although I never heard any response back from either Mr. Stevenson or Officer

1 Tomlinson, over the weekend, I read public comments in the press made by Officer Tomlinson  
2 supporting the propriety of the search warrants executed by SFPD.

3       4. Having received no response from the San Francisco Police Department, on the  
4 afternoon of May 14, 2019, on behalf of Mr. Carmody, I sent a letter to San Francisco Police  
5 Chief William Scott in which I detailed my concerns about the impropriety of the searches of Mr.  
6 Carmody's home and news service office and my efforts to reach the Department. In this letter, a  
7 copy of which is attached as Exhibit A, I requested that SFPD immediately return all of the papers  
8 and newsgathering equipment that it seized to Mr. Carmody (or his counsel) or, at a minimum,  
9 confirm that the San Francisco Police Department has taken all appropriate steps to ensure that  
10 none of Mr. Carmody's confiscated newsgathering materials are reviewed until the Court has an  
11 opportunity to hear Mr. Carmody's objections to the searches. I asked that the Department  
12 respond to my request by Noon on May 14, 2019. This deadline came and went without any  
13 response by Chief Scott or anyone from the Department.

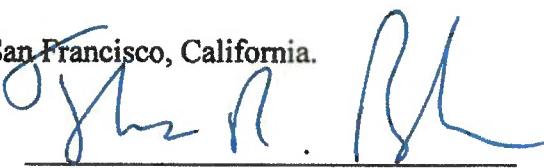
14       5. After news of the execution of the search warrants on Mr. Carmody's home and  
15 office became known, several journalism organizations issued proclamations denouncing the use  
16 of search warrants by San Francisco Police to seize his protected newsgathering materials.  
17 Attached as Exhibit B is a true and correct copy of statements issued by The Reporter's  
18 Committee for Freedom of the Press, The Committee to Protect Journalists, the Society of  
19 Professional Journalists (both Nationally and it's Northern California Chapter), the National  
20 Writers Union and the International Federation of Journalists.

21       6. The afternoon of May 16, 2019, I learned that this motion would be heard by the  
22 Hon. Judge Samuel Feng, Supervising Judge of the Criminal Division in Department 22 on May  
23 21, 2019 at 9:00 a.m. at the Hall of Justice, located at 850 Bryant Street in San Francisco,  
24 California. At approximately 1:23 p.m., I gave notice of all of this to Sean F. Connolly, Deputy  
25 City Attorney, by phone (415) 554-3863. As of the finalizing of this declaration counsel have not  
26 indicated if SFPD opposes the requested relief.

27  
28

1 I declare under penalty of perjury under the laws of the State of California and the United  
2 States that the foregoing is true and correct.

3 Executed this 16<sup>th</sup> day of May, 2019, at San Francisco, California.



4  
5 Thomas R. Burke  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## **EXHIBIT A**



Suite 800  
505 Montgomery Street  
San Francisco, CA 94111-6533

Thomas R. Burke  
(415) 276-6552 tel  
(415) 276-6599 fax

[thomasburke@dwt.com](mailto:thomasburke@dwt.com)

May 13, 2019

**Via hand delivery and electronic mail**  
**SFPDchief@sfgov.org**

William Scott  
Chief of Police  
San Francisco Police Department  
1245 3<sup>rd</sup> Street  
San Francisco, CA 94158

Re: Search Warrants Executed on 5/10/19 at the Home [REDACTED] and Office [REDACTED]  
[REDACTED] of Veteran San Francisco Journalist Bryan Carmody

Dear Chief Scott:

This law firm represents Bryan Carmody, a veteran San Francisco freelance journalist, whose home and office were searched by San Francisco Police on May 10, 2019, and whose protected newsgathering materials and equipment was seized and are now in the custody of SFPD.

We write to memorialize our request (first made this past Friday evening) that the San Francisco Police immediately return these improperly seized materials, or, at a minimum, not review *any* of the materials (including reporters' notebooks, paperwork and more than a dozen laptops and cellphones) that were seized from Mr. Carmody this past Friday, until his legal challenge to the search and seizure is fully resolved. *See* SFPD Receipt, enclosed. Indisputably, these materials are protected by California's shield law (Cal. Const. Art. 1, § 2(b); Cal. Evidence Code § 1070), Penal Code Section 1524(g), and the Privacy Protection Act of 1980 (42 U.S.C. § 2000aa) and should not have been confiscated by San Francisco Police in the first instance.

There is no conceivable basis here for the SFPD to claim any "exigency" exception to bypass these well-established protections for journalists like Mr. Carmody. To the contrary, San Francisco Police first visited Mr. Carmody at his home in the outer Richmond District on April 11th and repeatedly asked him to identify the source who gave him a police report concerning the death of San Francisco Public Defender Jeff Adachi. When Mr. Carmody respectfully declined to reveal his source he was threatened with a federal grand jury subpoena. Mr. Carmody steadfastly refused to identify his confidential source and the officers left.

Chief William Scott  
San Francisco Police Department  
May 13, 2019  
Page 2

On May 10, 2019, San Francisco Police returned to his home. They handcuffed and detained Mr. Carmody for several hours inside his home while nearly a dozen armed officers executed a search warrant. During the course of the search, officers learned of Mr. Carmody's office on Fulton Street. The police then obtained a second search warrant and drove Mr. Carmody to his office where they carried out a second search while Mr. Carmody remained in handcuffs.

As a result of both searches, San Francisco Police confiscated over a dozen laptops, computers, and cellphones that Mr. Carmody uses (and has previously used years ago) for his work as a journalist on literally hundreds of news investigations over the past three decades. The San Francisco Police Department seized and has control of his entire news operation – illustrating vividly why such search warrants are not permitted under federal and state law.

On Friday evening, I twice spoke with San Francisco Officer Joseph Tomlinson. I explained my concerns and asked someone from the Department to immediately contact me and to provide assurances that the newsgathering materials confiscated from Mr. Carmody would not be reviewed by law enforcement.

Having heard nothing back, on Saturday morning (5/11), I called the Department's media liaison, David Stevenson, who acknowledging knowing of my earlier calls to Officer Tomlinson. I reiterated my concerns to Mr. Stevenson – a former journalist who had worked with Mr. Carmody – now with the Department. I was assured SFPD had received my concerns and knew how to reach me.

As of this writing, we have yet to hear *any* response from the Department. I similarly reached out to the San Francisco District Attorney's Office on Friday evening and early Sunday morning, and was informed through an email that the San Francisco District Attorney did *not* review either of the search warrants that were executed on Mr. Carmody's home and office.

On behalf of Mr. Carmody, we request that SFPD immediately return all of the papers and newsgathering equipment that it seized to Mr. Carmody (or his counsel) or, at a minimum, confirm that the San Francisco Police Department has taken all appropriate steps to ensure that none of Mr. Carmody's confiscated newsgathering materials are reviewed until the Court has an opportunity to hear Mr. Carmody's objections to the searches. If we do not receive confirmation by Noon on May 14, 2019 that the Department is promptly returning the seized items and that they have not been, and will not be, reviewed, we will have no choice but to seek relief from the Court. This letter is sent without waiver of any of Mr. Carmody's legal defenses, claims, rights, privileges, remedies, or responses, all of which are expressly reserved.<sup>1</sup> We appreciate your immediate attention to this matter.

---

<sup>1</sup> We hope that this matter can be resolved without the need for Court intervention. However, we note that in addition to California law providing for the return of these items (e.g., Cal. Penal Code §§ 1538.5(n); 1540; 1524(g)), the federal Privacy Protection Act provides

Chief William Scott  
San Francisco Police Department  
May 13, 2019  
Page 3

Sincerely,

Davis Wright Tremaine LLP



Thomas R. Burke

DAVIS WRIGHT TREMAINE LLP  
Attorneys for Bryan Carmody

cc: Hon. Garrett L. Wong, Presiding Judge of the San Francisco County Superior Court (Via Hand-Delivery)  
Hon. Samuel Feng, Supervising Judge of the Criminal Division, San Francisco County Superior Court (Via Hand-Delivery)

Enclosure

---

journalists like Mr. Carmody with a cause of action against public officials who improperly seize newsgathering materials, and allows them to recover actual and statutory damages, as well as their attorneys' fees and costs. *See 42 U.S.C. §§ 2000aa, 2000aa-6; Morse v. Regents of the Univ. of Cal.*, 821 F. Supp. 2d 1112, 1121 (N.D. Cal. 2011) (photojournalist whose camera was seized could bring PPA claim against the chief of the UC Berkeley police department). To this end, we request that the SFPD preserve all documents relevant to this matter.

State of California- City of San Francisco  
**SEARCH WARRANT AND AFFIDAVIT  
(AFFIDAVIT)**

Sergeant Joseph Obidi #2328 swears under oath that the facts expressed by her in the attached and incorporated Statement of Probable Cause, are true and that based there on he has probable cause to believe and does believe that the person(s), property, and/or thing(s) described below is/are lawfully seizable pursuant to Penal Code Section 1524, as indicated below, and is/are now located at the locations set forth below. Wherefore, affiant requests that this Search Warrant be issued.

  
(Signature of Affiant)

NOBBS SEALING REQUESTED: YES (XX) NO ( )  
NIGHT SERVICE REQUESTED: YES ( ) NO (XX)

**(SEARCH WARRANT)**

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY SHERIFF, POLICE OFFICER OR PEACE OFFICER IN THE CITY AND COUNTY OF SAN FRANCISCO, CA: proof by affidavit having been made before me by Sergeant Joseph Obidi #2328, that there is probable cause to believe that the property, person(s), and/or things described herein may be found at the locations set forth herein and that it is lawfully seizable pursuant to Penal Code Section 1524 as indicated below by "X" (s) in that it:

XXX tends to show the property was stolen or embezzled.  
XXX tends to show that a felony has been committed or that a particular person committed a felony

**YOU ARE THEREFORE COMMANDED TO SEARCH:**

**Person(s):**

- The person of Bryan Carl Carmody, DOB 09-25-1970, California DL [REDACTED]  
-further described as a white male, Height: 6'-01", Weight: 240lbs, Hair: Blond, Eyes: Blue

**Place(s):**

- [REDACTED] San Francisco CA, further described as a two story single family home that is brown in color. The house is located on the [REDACTED]. The roof is brown in color. The numbers [REDACTED] are affixed on the front of the house next to the garage. The garage door is brown in color. There are stairs leading to the front door. The front door is brown in color and is located behind a black gate. See attached photo.
- Any safes, outhouses, storage sheds, containers, storage compartments that are capable of storing the item(s) to be sought, located on the grounds of [REDACTED], San Francisco CA.
- Bryan Carmody's personal cellphone (handset) using [REDACTED] From February 22<sup>nd</sup> 2019 to May 1<sup>st</sup> 2019.

**Vehicles:**

- 1- CA- 6UWY583 (2002 BMW SUV)
- 2- CA- 2PSU261 (1998 FORD SEDAN)
- 3- CA- 6FAP022 (2001 BMW SEDAN)
- 4- CA- 6PBA851 (2004 BMW SEDAN)
- 5- CA- 8Y7666 (1983 BMW)
- 6- CA- 22A0354 (1985 HONDA)
- 7- CA- 12X3248 (1991 HONDA)
- 8- CA- 21K5609 (2009 YAMAHA)

FOR THE FOLLOWING PROPERTY; PERSON AND THING(S):

See Exhibit A

All information obtained through the execution of the warrant that is unrelated to the object of the warrant shall be sealed and not subject to further review, use, or disclosure without a court order.

AND IN THE CASE OF PROPERTY, INFORMATION, AND/OR THINGS, TO SEIZE THEM IF FOUND and bring it/them forthwith before me, or this court, at the courthouse of this court. This Search Warrant and Incorporated Statement of Probable Cause was sworn to as true and subscribed before me this 9 AM day of May, 2019 at 12:21 AM (PM). Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.

HOBBS SEALING AUTHORIZED: YES  NO

NIGHT SERVICE AUTHORIZED: YES  NO

Honorable JUDGE GAIL DEITCH  
Judge of the Superior Court # 5 of the County of San Francisco, CA.



PROPERTY RECEIPT FORM  
San Francisco Police Department

RECEIVED FROM	DATE	CASE NUMBER
	5/10/19	190334240
ITEM(S)		
1.	(1) Samsung tablet	
2.	(1) HP laptop Pavillion silver SCD9031M2Q	
3.	(1) seagate hard drive NA8T17GG	
4.	(2) WD hard drive "captured vid backup 1" and 2	
5.	(1) hard drive open without cover	
6.	(1) Samsung cell phone from hallway	
7.	(1) Canon camera S110	
8.	(1) Sony Cyber-shot camera	
9.	(1) HP laptop 00196-268-256-503	
10.	(2) thumb drives	
11.	(1) SD disk	
OFFICER ACCEPTING PROPERTY (SIGNATURE)	WITNESS (SIGNATURE)	RECEIVED FROM (SIGNATURE)
<i>fullfull</i>	<i>#425 L. BERNSTEIN #2341</i>	<i>JK</i>

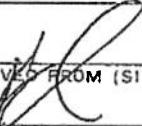
SFPD-315 (REV.06/99)

PROPERTY RECEIPT FORM  
San Francisco Police Department

RECEIVED FROM	DATE	CASE NUMBER
	5/10/19	190334240
ITEM(S)		
1.	(1) LG cell phone	
2.	(1) blue iPod	
3.	(1) Amazon Kindle, BLK w/chargers	
4.	(1) Sprint flip phone BLK	
5.	(1) Samsung Verizon flip phone	
6.	(1) Samsung ATT phone	
7.	(1) Blackberry Sprint phone	
8.	(1) Motorola cell phone	
9.	(1) HTC Verizon phone	
10.	(1) Verizon LG phone	
11.	(1) Samsung tablet	
OFFICER ACCEPTING PROPERTY (SIGNATURE)	WITNESS (SIGNATURE)	RECEIVED FROM (SIGNATURE)
<i>fullfull</i>	<i>L. BERNSTEIN #2341</i>	<i>JK</i>

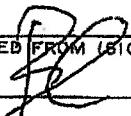
SFPD-315 (REV.06/99)

PROPERTY RECEIPT FORM  
San Francisco Police Department

RECEIVED FROM	DATE	CASE NUMBER
ITEM(S)	5/10/19	190334240
1. (1) Samsung Galaxy S7		
2. (1) Kyocera flip phone		
3. (1) Pearl colored HP laptop CND 54008R6		
4. (1) "Xfer drive 1" hard drive		
5. (1) HP computer tower		
6. (1) HP tower CNV 30400SV		
7. (1) "E-series" computer tower 031649465		
8. (3) CD's		
9. (1) Hard drive Seagate Backup + hub NAST5KMO		
10. (1) Seagate 5tb 1" NASTSKER		
11. (2) flash drives		
OFFICER ACCEPTING PROPERTY (SIGNATURE)	WITNESS (SIGNATURE)	RECEIVED FROM (SIGNATURE)
full full 4275	L. BERNSTEIN #23d1.	

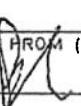
SFPD-315 (REV.06/99)

PROPERTY RECEIPT FORM  
San Francisco Police Department

RECEIVED FROM	DATE	CASE NUMBER
ITEM(S)	5/10/19	190334240
1. (1) thumb drive		
2. indicia		
3. (1) white iPad in black case		
4. (1) HP laptop black "special edition"		
5. (1) white iPhone		
6. (1) white iPod 30 GB		
7. (2) reporters notebooks		
8. (1) CD case leather w/ 12 CD's		
9. (1) Samsung tablet w/ case.		
10. (1) visual land tablet		
11. (2) LG verizon cell phones		
OFFICER ACCEPTING PROPERTY (SIGNATURE)	WITNESS (SIGNATURE)	RECEIVED FROM (SIGNATURE)
full full 4275	L. BERNSTEIN #23d1.	

SFPD-315 (REV.06/99)

PROPERTY RECEIPT FORM  
San Francisco Police Department

RECEIVED FROM	DATE	CASE NUMBER
[REDACTED] CA		5/10/19
ITEM(S)		
1.	(1) SD disk	
2.	(2) flash drives	
3.	(7) external hard drives	
4.	(6) flash drives	
5.	(6) SD cards	
6.	(1) Navy blue ext. hard drive	
7.	(1) "filing map" folder	
8.		
9.		
10.		
11.		
OFFICER ACCEPTING PROPERTY (SIGNATURE)	WITNESS (SIGNATURE)	RECEIVED FROM (SIGNATURE)
	#4276 L-BERNSTEIN #2301	

SFPD-315 (REV.06/99)

State of California- City of San Francisco  
**SEARCH WARRANT AND AFFIDAVIT  
(AFFIDAVIT)**

Sergeant Joseph Obidi #2328 swears under oath that the facts expressed by her in the attached and incorporated Statement of Probable Cause, are true and that based there on he has probable cause to believe and does believe that the person(s), property, and/or thing(s) described below is/are lawfully seizable pursuant to Penal Code Section 1524, as indicated below, and is/are now located at the locations set forth below. Wherefore, affiant requests that this Search Warrant be issued.

  
(Signature of Affiant)

HOBBS SEALING REQUESTED: YES (XX) NO ( )  
NIGHT SERVICE REQUESTED: YES ( ) NO (XX)

**(SEARCH WARRANT)**

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY SHERIFF, POLICE OFFICER OR PEACE OFFICER IN THE CITY AND COUNTY OF SAN FRANCISCO, CA: proof by affidavit having been made before me by Sergeant Joseph Obidi #2328, that there is probable cause to believe that the property, person(s), and/or things described herein may be found at the locations set forth herein and that it is lawfully seizable pursuant to Penal Code Section 1524 as indicated below by "X" (s) in that it:

XXX tends to show the property was stolen or embezzled.  
XXX tends to show that a felony has been committed or that a particular person committed a felony

**YOU ARE THEREFORE COMMANDED TO SEARCH:**

**Place(s):**

- [REDACTED], San Francisco CA 94102.
- Further Described as a multilevel (4floors) apartment building with the numbers [REDACTED] affixed on the front entrance. Room number [REDACTED] is further described to be a room with a brown door and the numbers [REDACTED] affixed to it on a black number plate.
- Any safes, storage sheds, containers, storage compartments that are capable of storing the item(s) to be sought, located on the grounds of [REDACTED], San Francisco CA.

**FOR THE FOLLOWING PROPERTY; PERSON AND THING(S):**

See Exhibit A

All Information obtained through the execution of the warrant that is unrelated to the object of the warrant shall be sealed and not subject to further review, use, or disclosure without a court order.

AND IN THE CASE OF PROPERTY, INFORMATION, AND/OR THINGS, TO SEIZE THEM IF FOUND and bring it/them forthwith before me, or this court, at the courthouse of this court. This Search Warrant and incorporated Statement of Probable Cause was sworn to as true and subscribed before me this 10/11 day of May, 2019 at 12:19 AM. /PM Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.

HOBBS SEALING AUTHORIZED: YES (X) NO( )  
NIGHT SERVICE AUTHORIZED: YES ( ) NO( )



Honorable Victor Hwang  
Judge of the Superior Court # 13, City and County of San Francisco, CA.

PROPERTY RECEIPT FORM  
San Francisco Police Department

RECEIVED FROM	DATE	CASE NUMBER
[REDACTED] 5/10/19 190 334 240		
ITEM(S)		
1.	KTSF check stub # 22894	
2.	FOX check stub # 76110791, 76110680, 76110910, 76110587	
3.	Disney check stub # 2623, 2369	
4.	NBC stub # 392 0039 391 3614	
5.	CBS check stub 9874 83068942, 214816	
6.	Nexstar check stub 3311332A	
7.		
8.		
9.		
10.		
11.	OFFICER ACCEPTING PROPERTY (SIGNATURE)	WITNESS (SIGNATURE)
	[Signature]	[Signature] 2328
	RECEIVED FROM (SIGNATURE)	
	[Signature]	

SFPD-315 (REV.06/99)

PROPERTY RECEIPT FORM  
San Francisco Police Department

RECEIVED FROM	SF	DATE	CASE NUMBER
[REDACTED] 5/10/19 190 334 240			
ITEM(S)			
1.	(1) Police report (SFPD)		
2.	(1) CD case containing 55 CD's		
3.	(1) thumb drive - san disk		
4.	(1) Motorola tablet		
5.	(1) HP tower		
6.	(1) Dell tower		
7.	(1) FX computer tower		
8.	(1) USB drive		
9.	(1) ASUS tower		
10.	(1) Lenovo idea center		
11.	(27) CDs in tower		
OFFICER ACCEPTING PROPERTY (SIGNATURE)	WITNESS (SIGNATURE)	RECEIVED FROM (SIGNATURE)	
[Signature]	[Signature]	[Signature]	

SFPD-315 (REV.06/99)

## **EXHIBIT B**

## PROTECTING SOURCES AND MATERIALS

# **Reporters Committee calls for investigation into search of journalist Bryan Carmody's home and office**

**REPORTERS COMMITTEE** • *May 13, 2019*

The San Francisco Police Department executed search warrants for the home and office of San Francisco-based freelance journalist Bryan Carmody on May 10 as part of a criminal investigation into the leak of a confidential police report that had been provided to Carmody by a confidential source. During the raid, police seized electronic devices, notes and documents — including a copy of the report — belonging to Carmody.

The report revealed details of the Feb. 22 death of San Francisco public defender Jeff Adachi. Two weeks prior to the search, police officers from the San Francisco Police Department asked Carmody who had provided him with a copy of the report. Carmody declined to identify his confidential source. An FBI spokesperson confirmed that while agents did not participate in the execution of the warrant, they were present and interviewed Carmody.

“Reporters rely on confidential sources to inform the public, and state and federal laws and regulations exist to protect reporters from being forced to disclose the identity of those sources. Any search targeting a journalist’s confidential material is a particularly egregious affront to First Amendment rights and should be investigated thoroughly,” said Bruce Brown, executive director of the Reporters Committee for Freedom of the Press. “Mr. Carmody’s devices and work product should be returned immediately.”

Gabe Rottman, director of the Technology and Press Freedom Project, who [tracks federal leak investigations and prosecutions](#) for the Reporters Committee, added:

“Although this is a state matter, the Justice Department’s news media guidelines require attorney general approval before the DOJ can subject a journalist to questioning for conduct arising out of newsgathering. It will be essential to determine if those guidelines were followed in this case, given the FBI interviewed Mr. Carmody during the search.”

**THIS PAGE INTENTIONALLY  
LEFT BLANK**



*Security camera footage shows police during a raid on the home of freelancer Bryan Carmody, in San Francisco, on May 10. Officers confiscated electronic devices and documents. (Bryan Carmody)*

## **San Francisco police raid freelancer Bryan Carmody's home**

May 13, 2019 5:02 PM ET

*New York May 13, 2019--The Committee to Protect Journalists today condemned a raid by San Francisco police on the home of freelance journalist Bryan Carmody, and called on authorities to immediately return electronic devices, documents, and other seized property.*

Between eight and 10 police officers executed a search warrant on Carmody's home in San Francisco on May 10, as part of an investigation into how the reporter obtained a confidential police report, Carmody told CPJ. The *Los Angeles Times* reported that police used a sledgehammer to open the gate to the property, handcuffed Carmody, and then executed a second search warrant on the home office that he uses as a newsroom. They took notebooks, computers, cameras, phones, and a copy of the police report, Carmody said.

Police had previously come to the reporter's house to ask him for the name of the person who provided the confidential police report, but Carmody declined their request, according to multiple reports.

David Snyder, executive director of the free expression advocacy organization the First Amendment Coalition, told the *L.A. Times* that the search violated California's shield law, which protects journalists' relationships with sources. According to the northern California chapter of the Society of Professional Journalists, the law bars authorities from executing a warrant on documents collected as part of newsgathering.

"The police raid on freelance journalist Bryan Carmody's home sends a chilling message to all local media," said CPJ's North America program coordinator Alexandra Ellerbeck. "Authorities should immediately return his equipment, stop pressuring him to reveal the identity of his sources, and pledge to follow California's shield law."

The raid is related to a police report about the February 22 death of San Francisco public defender Jeff Adachi, according to reports. Carmody put together a news package, which included the leaked document and additional reporting, that he provided to three television stations in the San Francisco Bay Area, according to local reports.

Carmody told CPJ that police seized tens of thousands of dollars of equipment from his home, making it impossible for him to continue working as a reporter.

In a statement emailed to CPJ, police spokesperson Joseph S. Tomlinson said, "The citizens and leaders of the city of San Francisco have demanded a complete and thorough investigation into this leak, and this action represents a step in the process of investigating a potential case of obstruction of justice along with the illegal distribution of confidential police material."

Snyder and Carmody's lawyer, Thomas Burke, described the search as unlawful. "It's designed to intimidate," Burke told the *LA Times*. "It's essentially the confiscation of a newsroom."

"They are trying to root out the source, and that's the core of what California's journalist shield law protects," Snyder said.

---

**Short URL:**

<https://cpj.org/x/77af>

---

**Committee to Protect Journalists**

Committee to Protect Journalists  
330 7th Avenue, 11th Floor  
New York, NY 10001

Except where noted, text on this website is licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License.  
(<http://creativecommons.org/licenses/by-nc-nd/4.0/>)

Images and other media are not covered by the Creative Commons license. For more information about permissions, see our FAQs  
(<http://www.cpj.org/about/faq.php>).

**THIS PAGE INTENTIONALLY  
LEFT BLANK**



# Society of Professional Journalists

Improving and protecting journalism since 1909



[Home](#) > [SPJ News](#) > SPJ condemns San Francisco PD's home raid to obtain source's name

## SPJ News

[Latest SPJ News](#) | [RSS](#)

# SPJ condemns San Francisco PD's home raid to obtain source's name

5/13/2019

[Tweet!](#)

[ADD THIS](#)

### CONTACT:

J. Alex Tarquinio, SPJ National President, 212-283-0843, [atarquinio@spj.org](mailto:atarquinio@spj.org)

Jennifer Royer, SPJ Director of Communications and Marketing, 317-361-4134, [jroyer@spj.org](mailto:jroyer@spj.org)

INDIANAPOLIS — The **Society of Professional Journalists** condemns the over-the-top actions of the San Francisco Police Department in searching and seizing equipment and notes from the home of a journalist in an apparent effort to **obtain the identity of the journalist's confidential source**.

The home of freelance video journalist Bryan Carmody was raided Friday by eight to 10 police officers who tried to break into his front gate with a sledgehammer. Once Carmody learned they had a search warrant, he let them in. They proceeded to search his home, guns drawn, and took notebooks, computers, phones, cameras and other personal property. Earlier, Carmody had refused to reveal the source of a confidential police report on the Feb. 22 death of San Francisco Public Defender Jeff Adachi.

"The extremes that the San Francisco Police Department went to are outrageous, especially when California has one of the strongest Shield Laws in the country to protect journalists from being held in contempt for refusing to disclose their sources' identities," said J. Alex Tarquinio, SPJ national president.

As the **SPJ NorCal Chapter pointed out in its statement**, California Penal Code section 1524(g) provides that "no warrant shall issue" for any item protected by the Shield Law. The NorCal Freedom of Information Committee is seeking more information on the raid, including why these laws were not adhered to.

### News and More

[Click to Expand Instantly](#)

- ▶ [SPJ News](#)
- ▶ [Events and Deadlines](#)
- ▶ [Quill](#)
- ▶ [Journalist's Toolbox](#)

### Tweets by @spj\_tweets

Society of Professional Journalists Retweeted

**J. Alex Tarquinio** [@alexatarquinio](#)

"We still do not know why he was killed, or where is his corpse," Hatice Cengiz ([@marcan\\_realtif](#)), fiancée of Jamal Khashoggi, tells [@HouseForeign](#). She calls for U.S. to put pressure on Saudi Arabia. cc: [@spj\\_tweets](#) [#PressFreedom](#) [#JusticeforJamal](#)

1h

Society of Professional Journalists Retweeted

**J. Alex Tarquinio** [@alexatarquinio](#)

At [@HouseForeign](#) hearing on global [#PressFreedom](#) issues with Jamal Khashoggi's fiancée, Hatice Cengiz, [@JoelCP](#), executive director of [@pressfreedom](#), is talking about the impact of technological smothering of journalists by China's surveillance state. cc: [@spj\\_tweets](#)

2h

Society of Professional Journalists Retweeted

[Embed](#) [View on Twitter](#)

[Join SP Renew](#)



— ADVEI Adver



**G**  
News



— ADVEI Adver

"One expects this level of disregard for the value of press freedom in an autocratic country without the First Amendment," Tarquinio said. "In this country, journalists have the right to gather and report on information. They also have the right to protect their sources. The seizure of any journalist's notes or equipment sets a dangerous precedent."

We call on the San Francisco Police Department to return Carmody's belongings in the condition they were in when confiscated. They must not search the hard drives of his computers or other devices for information they have no right to obtain under California law.

We also [renew our call to lawmakers to pass a strong Federal Shield Law](#) to make it crystal clear that journalists have the right to protect their sources as a fundamental tenet of freedom of the press and the First Amendment. This is crucial to a functioning democracy.

*SPJ promotes the free flow of information vital to informing citizens; works to inspire and educate the next generation of journalists; and fights to protect First Amendment guarantees of freedom of speech and press. Support excellent journalism and fight for your right to know. [Become a member](#), [give to the Legal Defense Fund](#), or [give to the SPJ Foundation](#).*

-END-



---

Copyright © 1996-2019 Society of Professional Journalists. All rights reserved.



[Legal](#) | [Policies](#)

## Society of Professional Journalists

Eugene S. Pulliam National Journalism Center  
3909 N. Meridian St., Suite 200  
Indianapolis, IN 46208  
317-927-8000

[Contact SPJ Headquarters](#)  
[Employment Opportunities](#)  
[Advertise with SPJ](#)

## SPJ.ORG

[Home](#)  
[Quill](#)  
[Journalist's Toolbox](#)  
[Excellence in Journalism](#)  
[Calendar](#)  
[News](#)  
[Career Center](#)  
[About SPJ](#)  
[SPJ Foundation](#)  
[Headquarters Staff](#)  
[Board of Directors](#)  
[Legal Defense Fund](#)  
[Awards](#)  
[Donate](#)  
[Advertise](#)

## Members

[SPJ Members](#)  
[Join SPJ](#)  
[Why Join?](#)  
[Chapters/Local](#)

## Missions and Resources

[Our Mission](#)  
[Journalism Training](#)  
[Freedom of Information](#)  
[Ethics](#)  
[Diversity](#)  
[Freelancers](#)  
[Students](#)  
[Educators](#)  
[International](#)  
[Generation J](#)

**THIS PAGE INTENTIONALLY  
LEFT BLANK**

# SPJ NorCal - Society of Professional Journalists - Northern California



- [Home](#)
- [News](#)
- [Awards](#)
- [Events](#)
- [Resources](#)
- [About SPJ](#)
- [Board](#)
- [Contact Us](#)

• May 12, 2019  
• by [SPJNCFOI](#)  
• in [FOI](#), [News](#)

## SPJ NorCal Committee Condemns Search of Freelancer Bryan Carmody as Attack on First Amendment

SAN FRANCISCO — SPJ NorCal's Freedom of Information Committee condemns the recent raid by law enforcement of freelance journalist Bryan Carmody, in an apparent attempt to identify the confidential source who provided Carmody with a copy of a police report detailing the circumstances of former San Francisco Public Defender Jeff Adachi's death. During the search, law enforcement officers seized documents, notes and a slew of digital devices from Carmody's home and office.

California's Shield Law protects journalists from being held in contempt for refusing to disclose their sources' identities and other unpublished/unaired information obtained during the news gathering process (*California Constitution, Article I, § 2(b)*; *California Evidence Code § 1070(a)*). California Penal Code section 1524(g) provides that "no warrant shall issue" for any item protected by the Shield Law.

The Freedom of Information Committee is seeking more information on the raid, including why these laws were not adhered to. That this search was carried out weeks after Carmody declined a request from San Francisco police to divulge his sources shows an alarming disregard for the right to gather and report on information.

Approaches to reporting on Adachi's death varied among local news outlets. The Society of Professional Journalists Code of Ethics directs: "[D]o not pay for access to news" and says reporters should "avoid pandering to lurid curiosity." Journalists should consider the motivations of anonymous sources and news organizations should disclose when content has been provided by outside sources, whether paid or not. While there may be legitimate questions on the circumstances surrounding the

reporting of Adachi's death, the seizure of any journalist's notes or other reporting materials sets a dangerous precedent.

An attack on the rights of one journalist is an attack on the rights of all journalists. San Francisco's wrongful actions against Carmody threaten fundamental journalistic freedoms which are vital to a functioning democracy.

*Contact SPJ NorCal Freedom of Information Committee co-chairs Matt Drange and Aaron Field: [spjnorcalfoi@gmail.com](mailto:spjnorcalfoi@gmail.com)*

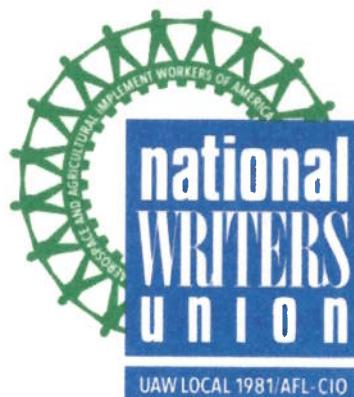
**Connect with Us**

**[Get Updates From SPJ NorCal](#)**

- [Home](#)
- [About SPJ](#)
- [Board](#)
- [Contact Us](#)

© 2013 SPJ-Northern California. All Rights Reserved.

**THIS PAGE INTENTIONALLY  
LEFT BLANK**

[HOME](#)[ABOUT](#)[CHAPTERS](#)[WRITERS' ISSUES WE CARE ABOUT](#)[NEWS](#)[WHY JOIN?](#)[CONTACT US](#)

## Join the NWU!

*Become a Union Member*

[JOIN NOW](#)

[Who Can Join?](#)

[Learn more](#) about our  
Membership Benefits...

[Log in to Renew Your  
Membership](#)

Already a member? [Login](#)

You are here: [Home](#) / [News](#) / Police "Confiscate a Newsroom" to Try to  
Reveal a Confidential Source

## Police "Confiscate a Newsroom" to Try to Reveal a Confidential Source

by [Larry Goldbetter](#), May 15, 2019

National  
News

[UAW News](#)

[Take Action](#)

[Political and  
Legislative  
News](#)

[NWU News](#)



Security camera captures police raid on Bryan Carmody's home

On Friday, May 10, ten San Francisco police officers and two FBI agents raided the home of freelance journalist and videographer Bryan Carmody. They showed up with sledge hammers and battering rams with guns drawn, and a search warrant looking for "stolen or embezzled" property. In reality, they were not so much looking for a leaked police report about the death of San Francisco's Public Defender Joe Adachi. What they were actually looking for was the confidential source who leaked the report.

Bryan was handcuffed for six hours while the police seized about \$30,000 worth of computers, ipads, cameras and other digital equipment, including those of his fiancée, effectively putting him out of business despite a 29-year career as a reporter and cameraman. His attorney Thomas Burke told NWU, the police "seized everything he has ever worked on or that he is currently working on." He said, they "essentially confiscated a newsroom." He has not been charged with a crime, yet the police are trying to hold his equipment for the duration of the investigation. The

[Member News](#)

[Labor](#)

[Solidarity](#)

[International](#)

[Solidarity](#)

[Industry News](#)

[Chapter News](#)

San Francisco Chronicle has the same leaked report.  
Why didn't the police kick down their doors as well?

The National Writers Union condemns the illegal police raid on the home and workplace of Bryan Carmody.

We demand that all of his equipment be returned to him immediately and that the SFPD stop their harassment so that he can continue to work as a journalist. We join the growing chorus of voices that condemn this illegal raid as a violation of California's shield law, which according to the northern California Society of Professional Journalists, bars authorities from executing a warrant on documents collected as part of newsgathering.

We urge everyone reading this statement to donate to Bryan's [gofundme](#) page so that he can begin to replace his equipment and get back to work.



## LINKS

[Our Mission](#)

[History and Achievements](#)

[Issues We Care About](#)

[Who We Represent](#)

[Leadership](#)

[Grievance and Contract Division](#)

[Governance/Committees](#)

## WRITERS' ISSUES WE CARE ABOUT

Writers' Pay, Copyright, Freedom of Expression, Diversity, Writer Health and Safety, Shield Bill

## RESOURCES

Contact Us

Contract and Grievance Assistance

FAQ

## SPANISH LANGUAGE DIVISION

Sindicato Nacional de Escritores

## IFJ PARTNERSHIP



NWU is the sole provider of IFJ Press Passes to freelance journalists in the U.S. Apply for a Press Pass

## NWUSO

Meet the non-profit arm of the National Writers' Union.

**THIS PAGE INTENTIONALLY  
LEFT BLANK**

# News and Press Releases

[Home](#) > Media centre > News > United States: journalists' house raided by police

## Categories

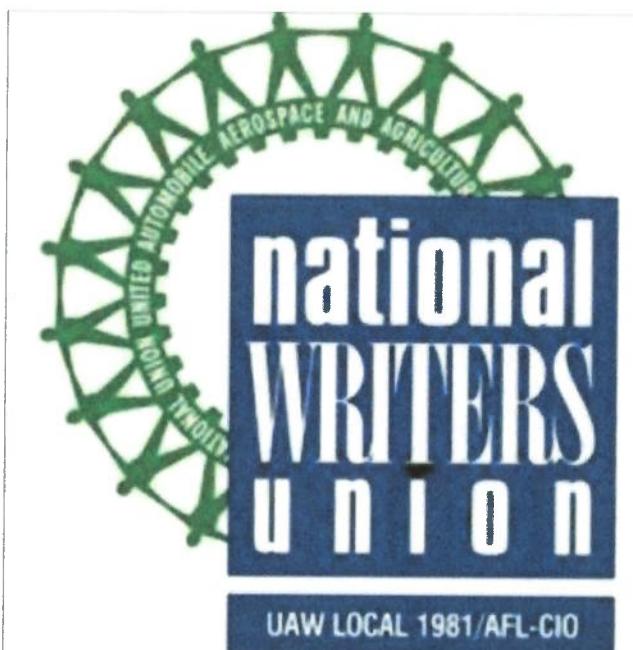
- > Campaign against impunity 2018
- > Press Releases
- > Fair Contracts for Journalists
- > Issues
- > Regions
- > IFJ Safety

16 May 2019

## United States: journalists' house raided by police



Freelance journalist Bryan Carmody's house was searched by the San Francisco Police on May 10 after he refused to reveal his source. The International Federation of Journalists (IFJ) and its affiliate the National Writers Union (NWU) condemn an illegal raid.



The raid was carried out by a dozen police officers armed with guns and sledgehammers. Bryan Carmody was handcuffed during six hours and the

The NWU said: "***We demand that all of Bryan Carmody's equipment be returned to him immediately and that the San Francisco Police Department stop their harassment so that he can continue to work as a journalist. We join the growing chorus of voices that condemn this illegal raid as a violation of California's shield law.***"

IFJ General Secretary Anthony Bellanger said: "***We join our affiliate in condemning intimidation on Bryan Carmody. The protection of journalists' sources is a key pillar of media freedom and the US police must accept this. Any state that calls itself a democracy must respect press freedom and journalists' rights. We call on the US authorities to respect the First Amendment of their Constitution and promote an enabling environment for journalists so that they can work without pressure.***"

**For more information, please contact IFJ on +32 2 235 22 16**

***The IFJ represents more than 600,000 journalists in 146 countries***

Follow the IFJ on Twitter and Facebook

Subscribe to IFJ News

## International Federation of Journalists

IPC-Residence Palace  
Rue de la Loi 155  
B-1040 Brussels, Belgium

+32 (0)2 235 22 00  
+32 (0)2 235 22 19

ifj@ifj.org

## About IFJ

The International Federation of Journalists is the global voice of journalists.

Founded in 1926, it is the world's largest organisation of journalists, representing 600,000 media professionals in 187 unions and associations in more than 140 countries.

## Quick links

[Global unions](#) [Press card](#)  
[Ethical journalism initiative](#)

## Subscribe to IFJ News

Type your E-mail

